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CHARLES ELMORE CROPLEY

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 577.

STANDARD PIPE LINE COMPANY, INCORPORATED, Petitioner,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, Respondent.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF SUPPORTING SAME.

CASE ORIGINATED IN DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF ARKANSAS, TEXARKANA DIVISION.

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(33,029)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 577.

STANDARD PIPE LINE COMPANY, INC.,
PETITIONER,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner above named, by its attorneys, respectfully prays the issuance of a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered April 18, 1927 (R., 219-225), in which motion for rehearing was denied July 12, 1927 (R., 237).

Summary Statement of the Matter Involved.

1. This action was begun by bill in equity in the District Court of the United States for the Western District of Arkansas, Texarkana Division, May 21, 1924, by the Standard Pipe Line Company, Inc. (under the laws of Louisiana), as plaintiff, against Miller County Highway & Bridge District, as defendant, a corporation created by a special act of the Legislature of Arkansas, No. 153, approved March 5, 1915 (R., 170-185). The bill was filed to cancel an assessment of alleged benefits on account of proposed public roads against 12 miles of pipe line of the plaintiff and its telegraph and telephone wire, $5,000 per mile—in the aggregate, $60,000. The Special Act 153 authorized the building of 60 miles of public highway in the district, and a bridge across Red River, which was the east boundary of the district. Three commissioners were appointed to manage the affairs of the district. The commissioners, by authority of the act, appointed three assessors to assess benefits arising from the proposed improvement against the lands of the district, including railroads, pipe lines, and other utilities.

2. The assessors filed their first assessment of benefits under said Act 153 April 29, 1916 (R., 45). The pipe line at that time was in the name of Prairie Pipe Line Company. Section 7 of Act 153 required the assessors to ascertain the value of the property without said improvement and also the value thereof as benefited by said improvement. The assessors found

the value of said property as $59,340 and benefits $59,340; total, $115,680 (R., 43). The assessment against 71.05 acres owned by the company in the district upon which the pumping plant and tanks were erected was made separately and is not involved in this case. The only question is the assessment against 12 miles of pipe line and one wire used in connection with the company's business, not along the right of way, but from Mandeville to Texarkana, and thence to Index, on poles of the Southwestern Telephone Company, a distance of 17 miles, worth $15 per mile. Under Legislative Act No. 15, approved January 29, 1917 (R., 185-206), the said Legislative Act 153 was superseded and the proposed improvement was changed from 60 miles of highway and bridge to 75 miles of highway. A new assessment was authorized and made of "12 miles pipe line and 12 miles telegraph and telephone lines, $5,000 a mile, or $60,000" (R., 47), and this assessment and that property alone is involved in this case. The property of the district subject to the assessment was not required to be valued under the new Act 15 by the assessors, as it existed before the improvement and as it would be after the improvement, but merely the benefits were assessed.

3. The bill filed in this case attacked the assessment upon the ground that the 12 miles of pipe line and wire were not benefited by the road improvement, measured by the fact that the value of the pipe line and its business and revenues were not increased thereby; that the assessment was made without any

reason or basis, and that it was palpably discriminatory and arbitrary and its enforcement would result in taking petitioner's property without due process of law and deny to it the equal protection of the laws; that the petitioner was engaged solely in transporting crude petroleum in interstate commerce, through its pipe lines, from Oklahoma through Arkansas to the Mississippi River in Louisiana; that it received and transacted no local business in the defendant district, and that the levy of said assessment was an undue burden upon interestate commerce and therefore void.

It was further charged in the bill that the assessment of 12 miles of pipe line and telegraph and telephone line was void, as it did not describe which 12 miles of pipe line of 25.49 miles of pipe line located within the district or which 12 miles of wire of the 17 miles in the district were assessed. The curative Legislative Act No. 83, approved February 14, 1925, attempting to validate the assessment of benefits in the district, was inoperative, in so far as the pipe line is concerned, on account of said misdescription.

4. The case was tried before Hon. F. A. Youmans, United States District Judge for the Western District of Arkansas, and special findings were made sustaining the contentions in the bill, and a decree was rendered July 2, 1925 (R., 31), enjoining the collection of said assessments.

The circuit court of appeals reversed this judgment (Fed. Rep., Vol. 19, 2d edition, page 3; R., 219).

Findings of the District Court.

1. The construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

2. The construction of the highway of the defendant has not added and will not add anything to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000 a mile upon plaintiff's right of way or pipe line and telegraph and telephone wires and lines in Miller County Highway and Bridge District is not laid upon the same plan that is followed with regard to other lands in the district.

4. The said levy of $5,000 a mile is palpably arbitrary.

5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The act of the Legislature of Arkansas (passed on the 14th day of February, 1925, long after this suit was instituted) purporting to validate generally the levy of the tax made by the defendant upon the property in the district is not effective to validate the levy upon plaintiff's right of way and pipe line, because, as

to plaintiff's property, such levy is arbitrary (R., 31-32).

Thereupon the court entered a judgment perpetually enjoining and restraining the Miller County Highway and Bridge District from attempting to enforce collection of said assessments (R., 32-33).

The circuit court of appeals reversed this judgment (Fed. Rep., Vol. 19, 2d edition, page 3; R., 219).

Questions Presented and Specifications of Error.

Your petitioner is advised that the circuit court of appeals erred in refusing to affirm each of the foregoing findings of law and fact made by the district court, and erred also in those respects which are fully set out in the specifications of error embodied in the brief supporting this petition, attached hereto, and the Court is respectfully requested to take said findings of law and fact, together with the specifications of error embodied in the brief attached to this petition, as presenting the questions and specifications of error involved in this petition, and that the petition be granted for the reason that the circuit court of appeals did not follow the said findings of law and fact made by the district court, and for the further reasons set out in the said specifications of error in the accompanying brief, and that said specifications of error be here accepted as fully and completely as though copied in full.

A certified copy of the entire record of said case in the said circuit court of appeals is hereby furnished, attached to and made a part of the application, and

marked Exhibit "A," in compliance with Rule 35 of this Honorable Court.

Your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals in said case is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of Section 240, Judicial Code.

Reasons for Granting Petition.

This is a case of special and general importance for the following reasons:

1. The Circuit Court of Appeals of the Eighth Circuit, in reversing the judgment of the lower court, decided against appellees the question of the denial to petitioner of the equal protection of the laws and the taking of its property without due process of law, as guaranteed to it and all others by the Constitution, arising from a palpable and arbitrary assessment of alleged benefits against its pipe line and wire of $5,000 per mile, $60,000, in conflict with applicable decisions of this court, towit: Road Improvement District No. 1 of Franklin County, Arkansas, *vs.* Missouri Pacific R. R. Co., decided April 18, 1927 (United States Supreme Court Advance Opinions, May 16, 1927, No. 13, 71 L. Ed., 622; Thomas *vs.* Kansas City Southern R. R. Co., 261 U. S., 758; Gast Realty Company *vs.* Schneider Granite Co., 240 U. S., 55; Kansas City Southern Ry. Co. *vs.* Road Improvement District No. 6, Little River County, Arkansas, 256 U. S., 658-661.

The Court of Appeals erred in the following declaration of law (R., 225):

> "They [the authorities] forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all circumstances there was sufficient justification for the legislative determination that appellee's property was benefited."

If benefited at all, the principal benefit would be when pipe would be relaid, not oftener than every 20 years, when the entire item of hauling will not exceed over $375 to $400 per mile (R., 206, at bottom of page). If there was a slight benefit from the use of the roads, it would not justify an assessment of $5,000 per mile, and it should have been corrected, as held in Road Improvement District No. 1, Franklin County, Arkansas, *vs.* Missouri Pacific R. R. Co., *supra,* and if there is no benefit the assessment should have been canceled, as in the cases above cited.

2. The Eighth Circuit was thought by the Judiciary Committee of the American Bar Association at its last session to be large enough for two or three circuits; and, while we do not cite authorities of this circuit as conflicting with the decisions of other districts, we call the court's attention to the conflict existing between the case at bar, as decided by the court of appeals, and the following applicable case, for the court's consideration: Board of Directors of Miller Levee District No. 2, *vs.* Prairie Pipe Line Company, 292 Fed., 474, wherein the benefit against a part of the same pipe line involved

in this case and in the confines of this road district was held void by the District Court, presided over by Hon. F. A. Youmans, and the Court of Appeals of the Eighth Circuit, presided over by Judge Lewis, circuit judge, and Booth and Johnson, district judges, as being problematical and speculative. The six miles of oil pipe line belonging to the Praire Pipe Line Company is a part of the same pipe line involved in this suit, located in Miller County Highway and Bridge District. In that case the Legislature directly authorized the assessment of 6 per cent *ad valorem* upon the assessed valuation of the real estate within the district, and the act included pipe lines within said district. It was shown that the pipe line was assessed for general taxation at more than the reproduction value, whereas improved lands in the district worth $60 to $100 per acre, and unimproved lands, worth $25 to $40 per acre were assessed at $10 per acre and $4.50 per acre, respectively, and at from 10 to 16 per cent of their true value. These are a part of the same lands that are in Miller County Highway and Bridge District. The court said: "That these results were unfair and injurious to the defendant, is in our judgment apparent," and that the adoption of such results was "palpably arbitrary and a plain abuse." That part of the opinion which applies more especially to the present case is as follows:

> "We are further of the opinion that the evidence sustains the conclusion of the trial court that the improvement provided for under the acts creating the Levee District did not benefit

the defendant or its pipe line within the limits of the Levee District. *In our judgment the evidence clearly shows that the improvement did not increase either the value of the pipe line or its earning capacity.* Whether the improvement might possibly in the future decrease the expense of upkeep and repairs was shown by the evidence to depend on so many conjectural and fortuitous circumstances as to render any such benefit purely speculative."

In this case certiorari was denied by the United States Supreme Court, Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 263 U. S., 718; 68 L. Ed., 523.

And also the following closely allied cases, which conflict with the decision of the court of appeals, in the case at bar:

Thomas, Sheriff, *vs.* Kansas City Southern Ry. Co., 277 Fed., 708.

K. C. Ry. Co. *vs.* May, 2 Fed. (2d), 680.

Kansas City Southern Ry. Co. *vs.* Ogden Levee District, Fed. Rep., Vol. 15, 2d Series, 637, upon the subject of correction by the commissioners or cancellation of palpably arbitrary assessments, and inadequacy of remedy provided by the statute creating the district. The drainage district involved in that case is just across the river from the present district, through which the pipe line also runs.

Thornton *vs.* Road Improvement District No. 1, Clark County, Ark., 291 Fed., 527.

3. The case at bar is a test case, for the purpose of ascertaining the limitations upon assessors who were charged with the duty of assessing benefits in improvement districts through which pipe lines run. At present there are three cases pending in the Federal court at Texarkana, in which the petitioner is plaintiff, against Road Improvement District No. 7, Little River County, defendant, where 14 miles of pipe line are assessed $250 per mile, $3,500; Road Improvement District No. 6, Little River County, Arkansas, 5.5 miles of pipe line are assessed $2,500 per mile, $13,715, and Road Improvement District No. 3, Sevier County, Arkansas, 2 miles, $8,300.

In the present case it is shown that there were two parallel lines running across the district, one laid in 1909 and the other in 1915, before the district was formed, the cost of construction of which was $8,000, or $9,000 per mile. The value of the pipe line laid in 1909, with the usual depreciation of 5 per cent, would be less than $4,500 based on reproduction value, and the other 5 years' depreciation would be $6,000. Twelve miles of pipe line in this case have been assessed $5,000 per mile, which must apply to one or the other of these lines, if the description is subject to correction.

It appears in the case of Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, *supra*, that the railroad was assessed $7,000 per mile of the main track, and the pipe line, telegraph and telephone lines were assessed $2,500 and $300 per mile.

In the case of Road Improvement District No. 1, of Franklin County, Arkansas *et al.*, appellants, *vs.* Missouri Pacific R. R. Company, appellee, *supra*, it appears that 24 miles of railroad were assessed at $77,686, or a little over $3,000 per mile, which was confirmed by an Act of the Legislature. The Supreme Court held this assessment was so excessive that it was violative of the due process clause of the Constitution, and the Court held that the assessment should be reduced to not more than $15,000, or about $600 per mile.

It is submitted that since the assessments against the railroads above mentioned were considered by the Supreme Court palpably, arbitrary and discriminatory, and denied to the railroads the due process and equal protection of the laws, that the same rule should be applied to the pipe line in this case, where the assessment is $5,000 per mile.

With reference to railroads, it is shown by these decisions and Thomas *vs.* Kansas City Southern R. R. Co., 261 U. S., 758, that a railroad may be benefited by roads, drains and levees, by opening up new territory and bringing products of the earth and people to the railroad for transportation, and thereby increase their revenues; but as to the pipe lines, in this case, it receives no products for transportation in Arkansas, and does no local business. There are no richer lands anywhere than the Red River bottom lands in this improvement district and in the adjoining Little River County. There are four districts covering the same territory through which the pipe line runs, viz, for

roads, a bridge, a levee and ditches. It can be seen that a benefit which would create these improvements will enrich the owners of the land, but it is different with the pipe line which lies under the earth.

4. Pipe lines are recognized and regulated (and protected from arbitrary official action) as common carriers by Federal laws, engaged in the transportation of an indispensably necessary product in universal use, and they are chargeable with and should perform certain governmental burdens. It is a matter of special interest to the public at large, and to the pipe lines that their obligations should be definitely defined and observed.

No case calls for such definition any stronger than the one now under consideration. It is especially important on account of the diversity of the methods and results of the assessments of benefits against pipe lines in local improvement districts for roads, drains, levees and bridges, especially those located in that part of the country through which the present pipe runs, a decision should be rendered herein correcting the opinion of the court of appeals, which we submit is in conflict with previous decisions of the Supreme Court of the United States and the circuit court of appeals, so that pipe lines may not be set apart, separate and distinct from other taxpayers, subject to the arbitrary and unreasonable action of assessors (who presumably wish to do right) in making their assesments without limitation, rule or guide.

The foregoing considerations and the necessity for uniformity in the decisions in the Circuit Court of Ap-

peals of the Eighth Circuit, which are rendered non-uniform by the case at bar (which can only be accomplished by the harmonizing influence of the Supreme Court) upon a question so important is here presented as a ground for review on certiorari by this Court.

5. The misdescription of 12 miles of pipe line and telegraph and telephone lines arising from the fact that there are two parallel lines, aggregating 25.49 miles of pipe line and 17 miles of wire in the district, was presented as a ground for relief by the bill filed, Section 16, R., 20, and also in the briefs and motion for rehearing, paragraph 9, R., 132, in the court of appeals, but the point was not mentioned in the opinion. This proposition is also presented as a ground for review by certiorari.

6. The assessment of benefits herein of $5,000 per mile against the pipe line on account of alleged benefits will affect the use, value and ownership thereof to that extent that it will be an undue burden upon interstate commerce and the business of transporting crude oil in interstate commerce by said company and will violate the statutes of the United States regulating commerce between the States.

7. Section 1, Act 153, and Section 1 of Act 15, which takes the place of Act 153, endows Miller County Highway & Bridge District with perpetual existence, and it is created not only for the purpose of building roads, but re-building them and keeping them in repair.

Act 83, "An Act in aid of Miller County Highway & Bridge District," see appendix to this brief, as it is not copied in the transcript, approved February 14, 1925, provides in Section 1:

"The Miller County Highway & Bridge District are hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed;" and additional benefit assessments are authorized on account thereof.

Section 1 further provides that the "total present assessment of benefits in the aggregate shall never be diminished."

It is then provided in Section 4, Act 83, that "the assessment of the benefits of said Miller County Highway & Bridge District, now on file, and any other assessment of benefits, which it may make, shall bear interest at the rate of 6 per cent per annum."

Therefore the $60,000 assessment against 12 miles of pipe line will be increased annually at the rate of 6 per cent per annum, or $3,600 yearly.

Should the rule of assessment sustained by the court of appeals prevail, then it would be authority for an assessment of more than $240,000, in the aggregate, including the remaining 38 miles in the district not assessed. There have been four acts of the Legislature and each of them adds more power to the commissioners.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the said judg-

ment of the United States Circuit Court of Appeals should be granted.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

I hereby certify that I am of counsel for the petitioner named herein, Standard Pipe Line Company, Inc., of Louisiana, and in accordance with the request of the petitioner, the foregoing petition has been prepared; that the allegations contained in said petition are true to the best of my knowledge and belief, and that said petition is not made for the purpose of delay, and is, in my opinion, well founded in law and in fact, and should be granted.

WILLIAM H. ARNOLD.

TEXARKANA, ARK., *September* 12, 1927.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 577.

THE STANDARD PIPE LINE COMPANY, INC.,
PETITIONER,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, RESPONDENT.

BRIEF IN SUPPORT OF PETITION.

The opinion of the court below (R., 219-225) is reported Federal Reporter, Volume 19, 2d edition, page 3. The judgment of the court below, review of which is asked in this proceeding, was rendered April 18, 1927 (R., 225). Motion for rehearing was filed June 6, 1927, and denied July 12, 1927 (R., 237).

The petition invokes the jurisdiction of this Court under the provisions of paragraph (*a*) of Section 240

of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat., 939), providing for the granting by this Court of writs of certiorari to the United States Circuit Court of Appeals.

Statement of the Case.

The value of the pipe line and the amount of its revenues were not increased by the road district. A pipe line is built without regard to the roads, and it has its own road along the right of way, and the roads in this district do not parallel the pipe line. The roads in the district fall within that class receiving Federal aid, under the Act of Congress approved July 11, 1916, Chapter 241, 39 Stat. at Large, 355, entitled, "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," under the Federal Highway Act, approved November 9, 1921, amending said Act of Congress above mentioned. One of the roads, No. 67, connects with Highway No. 74 at Little Rock, which extends east to Cape Lookout, N. C., and it is one of the "First Priority Roads," as approved by John J. Pershing, General of the United States Armies, August 23, 1922, and the improved roads in the district constitute a part of the general highway system, which are used in interstate traffic and commerce.

The only evidence of benefit to the pipe line by the roads was such use of them as was necessary for employees to go to their work to patrol the lines, or for hauling pipe and material for reconstruction and repair. As the value of the pipe line and its revenues

were not increased by the roads, the tax cannot be justified by mere evidence of use, and the pipe line company, being engaged in interstate commerce, could not be prevented from using the roads.

Snetzer *vs.* Gregg, 129 Ark., 546.
Buck *vs.* Kuykendall, 267 U. S., 307-317.
Michigan Public Utilities Commission *vs.* Duke, 266 U. S., 570-578.
Bush *vs.* Maloy, 267 U. S., 317-326.

The life of a pipe line is 20 years, and depreciation 5 per cent per annum. The assessment was against 12 miles of the pipe of the 25.49 miles of pipe, consisting of two parallel lines, one laid in 1909 and the other in 1915. The cost of the 1915 line was $8,000, or $9,000 per mile, and the other less. Apply the 5 per cent depreciation to 12 years for the 1909 line and 5 years for the 1915 line, when the 1920 assessment was made, and it will be seen that the depreciation would reduce the lines to not exceeding $5,000 per mile. In other words, the assessment against the pipe line is equal to its value.

The Method of the Assessment in the District.

First. The testimony of Geo. T. Conway, the only witness who testified on this point, is that the acreage, which comprised over 136,000 acres, was laid off into zones; zone 1 included lands within one mile of the road, assessed at $30 per acre; zone 2 included land in two miles of the road, assessed at $25 per acre, and zone 3 included land within 3 miles of the road, as-

sessed at $20 per acre (R., 53). The assessors did not take into consideration the value of the land itself or the dwellings and improvements thereon, but just simply the location. (See last 11 lines of R. 53.) There were plenty of houses throughout the district, and a great part of the land in cultivation. (See first 11 lines at top of page, R. 54.)

Second. As to the lands in the City of Texarkana, the assessors ascertained the assessments for general taxing purposes and fixed the benefit at an amount equal to that assessment (R., 57).

The pipe line was assessed on the benefit plan without any rule or guide (R., 65). At bottom of page 54, and R., top of page 55.

Actual Value of Cleared Lands Worth $100 per Acre and Wood Lands $40 per Acre.

L. C. Adams, witness for the district, and the only witness who testified on the point of value of lands in the district, said that the cleared Red River Bottom lands in cultivation were worth $100 per acre, and that the wood lands were worth $40 per acre (R., 168). These values were increased from $18 per acre (R., 168) by reason of improvement districts, levees, ditches and roads (R., 169).

Of 136,000 acres comprising the district, 96,000 acres were rich bottom lands in Homan Drainage District and Miller Levee District No. 2.

Lands in the District Assessed for Purposes of General Taxation at 10 Cents on the Dollar.

W. J. Paup, witness for the district, and the only witness who testified on the point of assessments for general taxation on the *ad valorem* basis (which is not the benefit assessment involved), testified that the cleared land in the district in 1920 was assessed at $10 per acre, and that the wild lands were assessed at $4.50 per acre; that the average assessment of hill lands and $4.50 per acre for wild lands (R., 159).

He further testified that the lands lying in Miller Levee District No. 2 (about which L. C. Adams testified) had been assessed at $10 per acre for cleared lands, and $4.50 per acre for wild lands (R., 159).

The Method of Assessment for Miller County Highway and Bridge District Fixed by Legislative Acts.

The method required by Section 6 of Special Act 153 says:

The assessors "shall ascertain the value of the real property (which included the pipe line and other utilities) within said district, without said improvement, *and the value thereof as benefited by said improvement, and shall charge against each parcel of real estate (and other utilities)* an assessment according to the benefit that will accrue to it by reason of construction of said highways and bridge." The italicized words are left out of the copy of act, in Section 8, at page 173, but the exact language of the acts will be shown in the appendix.

The last paragraph of Section 8 of Act 153 (R., 175) provides that:

> "All railroads, pipe lines (and other utilities) in any way connected with the realty in said district and the appurtenances in said district shall be assessed *according to the betterments and increase in value* in like manner as herein prescribed for real estate, except that assessment shall be made per mile."

Section 6 of Act 15, approved January 29, 1917, under which the new assessment of July 24, 1920, was made, provides:

> "Future assessments shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, pipe lines (and other utilities) *by the mile.*"

Then we quote from Section 7 of Act 15, 16th line from bottom, R., 188, "opposite each piece of property shall be placed the name of the owner, if known to the assessor, and the amount of the *betterments.*" Thus, it is apparent that the assessors did not follow the acts, but as between the lands in the city and the lands in the country, the pipe line was singled out to bear a benefit assessment as of its value; while the lands in the city, if the assessment for general taxation prevailed there as in the country, were assessed at one-tenth of their value, as the *ad valorem* for general taxation was adopted as a basis; and the agricultural

lands bore for the special road assessment from one-fifth to one-third of their value.

The Entire Costs of Hauling from Station and Stringing Along the Pipe Line Would Not Have Exceeded $375 to $400 per Mile.

The uncontradicted evidence in this case shows that the first pipe line was laid in 1909 diagonally across the territory which, subsequently, in 1915, formed the Miller County Highway and Bridge District, and another parallel line was laid across the same territory in 1915. These were put down by the Prairie Pipe Line Company, and December 1, 1922, these lines were purchased by the petitioner herein, the Standard Pipe Line Company, Incorporated, of Louisiana (R., 91).

The testimony of Mr. R. A. McGrew, who is engineer and vice-president of said company, is not contradicted that the cost of the reconstruction of the line (when prices were high) in 1920 would be $11,500 (R., 91), and in 1915, when the second pipe line was laid, $8,000 or $9,000, and in 1909, when the first pipe line was laid, considerably less (R., 91).

It is further uncontradicted that these were the only pipe lines owned by the petitioner in said district when the assessment of 1916 and 1920 were made under said Acts 153 and 15.

The uncontradicted testimony of Mr. W. B. Fulton, the engineer of the petitioner, is that these two lines of pipe aggregated 25.49 miles, when each assessment, 1916 and 1920, was made (R., 73).

The testimony of Mr. Conway, the principal assessor, intimated that he did not know that there was but one pipe line in the district, and that it was assessed as being twelve miles in length (R., 54).

The only effort on the part of the Highway District to show benefits to the pipe lines by reason of the use of the road in hauling pipe and materials to the right-of-way of the pipe line company or to the nearest points to the pipe line, but this hauling was not for the benefit of the two pipe lines in existence when these assessments were made. The assessors did not undertake to make the assessment on the ground that other pipe lines would be laid.

It is shown that in 1923 (see Fulton's testimony, R., 77-78) two other pipe lines were laid parallel with the first two, and according to the testimony of Mr. McGrew, the costs of the entire hauling from the railroad to the pipe line and the distribution thereof along the pipe line would not be more than 4 per cent of the cost of the pipe line. None of these roads of this district was used when the pipe was laid in 1909 and 1915, and the use of the roads occurred in 1923, three years after the last assessment was made when the two additional pipe lines were laid; and if the entire cost of hauling and laying the pipe line should be treated as benefits received from the road, it could not exceed more than the estimate of Mr. McGrew, $375 or $400 per mile (R., 206-7). The uncontradicted evidence is that the value of the pipe line was not increased by the road (R., 88).

This was so found by trial court, and it is submitted that the evidence does not sustain the court of appeals in reversing the judgment.

Map of District. R. 210-211.

Miller County Highway & Bridge District is agricultural, containing 136,322 acres, within which is located what is known as Miller Levee District No. 2, consisting of about 90,000 acres of rich bottom lands, and Homan Drainage District consisting of about 6,000 acres of rich bottom lands. The southwestern part of the district consists of agricultural hill lands. The District is bounded on the west by a line beginning three miles south of Texarkana, running north to State Line between Arkansas and Texas and parallel to the Kansas City Southern Railway to Index, a distance of thirteen miles; thence northeasterly with the meanderings of Red River to Fulton, a distance of fifteen miles; thence southeasterly with the meanderings of the river, fourteen miles; thence west to the place of beginning. This territory embraces nearly the north one-half of Miller County. The City of Texarkana is located on the State line, consisting of a population of 8,259 in Arkansas, and 11,840 in Texas. (Census, 1920.)

The Property of the Standard Pipe Line Company, Inc., in Miller County Highway & Bridge District.

At the time the first assessment was filed, April 29, 1916 (R., 45), and also when the second assessment was filed, July 24, 1920 (R., 51), the Prairie Pipe Line Company owned two separate tracts of land, assessed

separately, 40 acres and 31.5 acres, located at Mandeville, a station (unincorporated) on the St. Louis, Iron Mountain & Southern Railway, upon which is located the pumps, plant and tanks of said company. The assessment against the land and improvements thereon is not in controversy in this case.

The said Prairie Pipe Line Company, at the time said assessments were made, owned two district pipe lines in the district buried in the ground about twenty inches, entering the district at a point near Index (station on the Kansas City Southern Railway and also on the river), and running in a southeasterly direction through the district to a point where it leaves the district six miles east of Texarkana. These lines are practically parallel, and aggregate 25.41 miles in length. As to telephone poles, there were none, and as to wire, there was a single wire running from Mandeville to Texarkana thence to Index, a distance of 17 miles, worth $15 per mile. Said pipe lines are crossed by the gravel roads in four different places in the district, almost at right angles.

Accessible to Railroads for Shipment of Pipe and Materials.

The railroads in the district are the Kansas City Southern Railway, running along State line between Arkansas and Texas, from Texarkana parallel with a gravel road to Index, a distance of ten miles, and there is a railroad station (Whatley) at a point midway between Texarkana and Index, and also another at a point north of Index, two or three miles (Ogden).

The St. Louis, Iron Mountain & Southern Railway, running through the district, from Texarkana to Fulton, parallels one of the gravel roads. The St. Louis Southwestern Railway runs from Texarkana through a part of said district, in a southeasterly direction, a distance of four miles; thence it runs in a southerly direction to Garland City. It can be seen, therefore, that at no point accessible to a road is a pipe line within a greater distance of some loading or unloading point of the railroad than two or three miles. There are unloading railroad stations (Genoa) on the St. Louis Southwestern; Mandeville, Texarkana and Paup Spur on the St. Louis Iron Mountain; and Texarkana, Whatley, Index and Ogden on the Kansas City Southern.

The Cost of Hauling Only 4 Per Cent of the Entire Construction.

There is a wagon road constructed and maintained by the pipe line company along and over its pipe line right of way. Hence, the only hauling that could be done upon the public road was from the point where the pipe could be unloaded at one of these stations, to a place where it could be deposited and later loaded on wagons and hauled upon the right of way of the pipe line. The cost of the entire hauling from the railroad to the place where it was to be deposited in the trench in case of reconstruction of the pipe line, or the construction of a new line, is only four per cent (4%) of the entire cost of the construction of the pipe line, $375 to $400 per mile, while the entire reproduc-

tion cost would amount to about $11,000 per mile (R., 206-207).

Benefits to Pipe Line Problematical and Speculative.

The pipe line is peculiarly advantaged by its location with reference to the railroads and unloading stations, and its own road built along the pipe line for the purpose of access and distribution. The pipe lines assessed were laid in the ground 1909 and 1915 and there have been no major repairs. (Fulton, R., 74; McGrew, R., 92.) The pipe line is constructed of joints of rolled steel of the average length, of 21 feet, and are connected up with what pipe line men term collars, and they are screwed into these collars. These collars occasionally will leak. A line walker has his calking tools along, and calks these joints. The expense of upkeep has not been less than it was before the roads were built (R., 74-75). The pipe line keeps only one auto in the district (R., 89). There was a piece of one of these lines near the river removed for the purpose of paralleling it with the other line, and new pipe was substituted in place of that part of the line removed (R., 92). Previous to building the gravel roads, there were roads (R., 146, 148, 149). The engineer of the district testified that no special consideration of advantage or benefit was given to the pipe line in building these new roads (R., 149).

In 1923 the pipe line company constructed two other pipe lines, parallel with the two purchased from the Prairie Pipe Line Company. These were laid in 1923, three years after the last assessment was made (R.,

77). Some of the pipe was hauled from the railroad stations, principally Paup Spur, including railroad stations, along the improved roads (which had taken the place of the dirt roads) and a full load carried on the improved road upon the pipe line road along the pipe line; and where a full load was taken from the station, it would have to be unloaded in order to unload it before getting to the pipe line road, and often in hauling from the station over the road the wagons only took such number of pipes as could be hauled along the pipe line road, thus avoiding the necessity of throwing off part of the load (R., 155). It was shown that the roads did not parallel the pipe lines, and no full load could be hauled along the improved road to the pipe line, except at the crossings. There was an unloading place between Paup Spur and Index where some of the truck loads were discharged, and then it was necessary to reload the pipe on wagons and haul the same to the pipe line and along the pipe line. The cost of handling the pipe line in loading and reloading minimized if it did not entirely take away the advantage of the limited use of the public road in hauling the pipe.

But no part of this hauling in 1923 applied to those two pipe lines owned by this company in 1920, against which the assessment alone can apply, if at all.

In the opinion of the circuit court of appeals it is said: "Other witnesses testified that on the occasion of a fire at appellee's pumping station, the fire department, at its request, arrived in time to be of material assistance; that without good roads they would not

have attempted to run the risk of danger to equipment and danger to the lives of the firemen that would have resulted." The only evidence in regard to this is that of W. J. Springer, Chief of Fire Department (R., 100 to 104), who testified that one day last week (April 21, 1925) the fire department made a run to Mandeville, a distance of 6 miles, for the purpose of putting out a conflagration at the pumping plant of the Standard Pipe Line Company, Inc.

> "Q. As a result of that, was the fire extinguished so that no heavy damage occurred?
>
> "A. No, sir; the fire was not extinguished (R., 101). It burned out, so I understand, about 11:30. We put a pump to work until the gate house boiled over, or rather the oil came back, boiled over and ran down the pit inside of the pump house, then we quit pumping water, and the only thing that was done then, we replaced a door in the side of the main engine room, a fire door which had burned and flooded that room. There was some ditching done and dikes thrown up. That was done by the company's man." (R., 101).

This apparently is the only occasion in the history of the fire department where it attempted to put out a fire for the Standard Pipe Line Company, Inc.

But it is submitted that this benefit, if it was done, can not be charged to the pipe line itself, the assessment of which alone is involved in this case. The assessed benefits against the lands, which include pumping plant and the tanks where the fire was, are not

questioned. The assessments against the lands have been regularly paid and are not involved in any way in this case.

In the opinion of the United States Circuit Court of Appeals, page 220, in 14th line from top, "it (the pipe line company) does no business within the district other than maintain and operate its pipe line as part of an interstate system." And in 18th line from top of page (R. 221) the court says: "It obtains all its oil in Texas or Oklahoma, and conveys it through Arkansas to a terminus in Louisiana, nor does it have any revenue from any source within the State." There is no evidence that any of the oil is obtained in Texas.

In the third paragraph (R., 221) the court said:

> "These and other witnesses called by *appellee* testified, however, that when they put in two additional lines they used the new roads for hauling pipe and unloading it adjacent to the right of way; *that the new roads resulted in great economies in time and cost*, both in laying and repairing the line and in affording access to the same."

No witness for appellee testified to this statement.

The court said in the second paragraph, page 225:

> "The assessment here is what is denominated as a general improvement tax, laid against the real property owned by appellee within the district on an *ad valorem* basis."

This statement is not sustained by any evidence.

Specifications of Error.

Substantially the same assignments of error herein were presented in motion for rehearing and by brief to the court of appeals (no assignments of error having been made originally by appellee in the court of appeals, since your petitioner was appellee in that court; see petition for rehearing, R., 227-236).

1. The circuit court of appeals erred in its failure to sustain each of the findings of law and fact, as made by the district court, as copied in the petition for writ of certiorari (R., 31).

2. The circuit court of appeals erred in its failure to hold, as did the lower court, that the levy of $5,000 per mile upon plaintiff's pipe line and telegraph and telephone wires was palpably arbitrary; added nothing to the value of petitioner's property; added nothing to petitioner's revenue; alleged benefits were speculative and conjectural; that said levy was not upon the plan followed with regard to other lands in the district; that the attempted confirmation and ratification of the assessment of benefits by Legislative Acts 15 and 83 was invalid for non-description of the property involved; that said description rendered the assessment invalid; that the said assessment was so arbitrary and discriminatory that it denied to the petitioner the due process and equal protection of the provisions of the Constitution of the United States, and that said assessment was void, as being an undue burden upon peti-

tioner's business, which is that of transporting oil in interstate commerce (motion for rehearing 19, R., 235).

3. It is submitted that the result of this case in the court of appeals was probably controlled by misunderstanding of the facts, as shown by the following statement in the opinion of the court (beginning 20th line from top, R., 225) which is here assigned as error:

> "The assessment here is what is denominated as a general improvement tax, against the real property owned by appellee within the district, on an *ad valorem* basis."

This was argued in the brief for rehearing in the court of appeals.

3. The court of appeals erred in failing to hold that the alleged assessment of benefits did not describe any property belonging to petitioner so that it could be identified and found, and such assessment was therefore void and inoperative. This assignment is directed to the evidence that there were two parallel pipe lines in the district belonging to the petitioner, aggregating 25.49 miles, and that the right of way was not assessed, and that both pipe lines could not have been assessed under the description of 12 miles of pipe line, nor could 17 miles of wire be included within 12 miles. (Motion for rehearing, No. 10, R., 232.)

4. The court of appeals erred in not holding that the assessment of benefits against the pipe, telegraph and telephone line without any basis or rule at $5,000

per mile was a constructive fraud upon the rights of the petitioner, and that the assessment should be set aside and cancelled. (Motion for rehearing, No. 11, R., 232.)

5. The court erred in not finding that the plaintiff is not chargeable with $5,000 per mile of its pipe line, upon the ground merely that it had to transport its pipe over part of the public road at a time when new pipe lines were being laid in 1923, and in not holding that the sustaining of the assessment by reason of the fact that said roads were so used would be a tax upon plaintiff's business, and not an assessment that could be justified by the facts for a local road improvement. (Motion for rehearing, 14, R., 234.)

6. The court erred in not holding that the alleged assessment of benefits was a burden upon the interstate commerce in which the plaintiff was solely engaged from the time said pipe lines were constructed and laid. (Motion for rehearing 16, R., 234.)

7. The circuit court of appeals erred in failing to hold that plaintiff (the petitioner herein) was not estopped to have relief by virtue of its bill in equity, on account of the failure of the Prairie Pipe Line Company to avail itself of the administrative remedy provided by Section 7 of Act 153, creating said district, for the purpose of submitting and having corrected any complaint or objection it had to the said assessment of benefits.

8. The court of appeals erred in failing to hold that your petitioner is estopped to prosecute the bill in

equity filed in this cause, because the Prairie Pipe Line Company paid three years' taxes under the original assessment, and failed to appear before the assessors or commissioners for the purpose of having the assessment corrected in the time and in the manner prescribed by Section 6 of Act 15.

9. The court of appeals erred in holding that the petitioner has been estopped by any action of the Prairie Pipe Line Company or any other account from prosecuting said bill in equity.

10. The circuit court of appeals erred in considering the evidence that the Standard Pipe Line Company, Inc., hauled joints of pipe, materials and men over the improved roads in the construction of new pipes in 1923, as evidence of benefits to sustain either of the assessments of 1916 or 1920 against two pipe lines, one of which was laid in 1909 and the other 1915.

11. The court of appeals erred in considering any evidence of the use of the public roads by the Standard Pipe Line Company, Inc., in carrying on its business of maintaining and operating the said pipe lines, which it owns and against which assessments have been laid.

12. The court of appeals erred in considering as evidence of benefit against said pipe lines, the circumstance of the Fire Department making a run to Mandeville over the public road with the city fire equipment for the purpose of aiding the subjugation of a fire, located on a tract on which the assessments are regularly paid and which are not involved in this case.

13. The court of appeals erred in making the following statement and applying the same as material in the consideration of this case, beginning 4th line, R., 220: "Full right of appeal from the action of the assessors was given to the commission and thence to the county court."

This and assignment No. 7 is directed to the fact that in 1920 a new assessment was made to take the place of the one herein; Section 7 of Act 153 allowed an appeal to the county court from the action of the commissioners, and to the further fact that the Arkansas Supreme Court holds that such an appeal would be ineffectual, as without jurisdiction to entertain the same.

14. The court of appeals erred in that part of its opinion, in the following statement, beginning seventh line from bottom of R., 219: "Under a third act relating to this district, being No. 83 of the year 1925, the Legislature declared that the assessment of benefits made by the district to be just, equitable and proportionate *and ratified the same.*" This assignment is directed to the proposition that the Legislature could not cure the assessment by reason of the fact that the particular 12 miles of pipe line intended was not identified by the assessment.

15. The court of appeals erred in its declaration of law in the opinion as follows (Motion for rehearing, 8, R., 231-2): "They (the authorities which had previously been quoted) forbid us to weigh the *benefits* against the burdens, and require us to hold in the

instant case that under all circumstances there was sufficient justification for the legislative determination that appellee's property was benefited."

16. The circuit court of appeals erred in not sustaining the decision of the lower court, in view of the finding of the court of appeals, as follows, beginning with the ninth line from bottom of page R., 222: "It may be observed that the procedure by which the value of the particular property of appellee was arrived at and the *amount of the benefits* determined does not commend itself to us as altogether fair, nor is the tax imposed against appellee *entirely equitable* as between it and *other property owners* of the district."

17. The court of appeals erred in considering as material in this case that part of the opinion, beginning in 13th line, R., 222, as follows: "Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest." There is estoppel even without considering the general re-assessment. See opinion by Kenyon, Circuit Judge, Kansas City Southern Ry. Co. *vs.* Ogden Levee District; also opinion by Booth, Board of Directors of Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474; also upon the questions of estoppel herein asserted.

18. The court of appeals erred in holding that the pipe line of the Standard Pipe Line Company, Inc., is real property and property included in the district for the same reason that rights of way of railroad companies are included. The said pipe lines are assessed

as personal property in Arkansas, under Sections 9976 *et seq.* of Crawford & Moses Digest, Statutes of Arkansas, 1921, and attention is directed particularly to Subdivision 4 of Section 9979, of Crawford & Moses Digest, which is as follows:

> (4) "In case of any pipe line company the commission shall take the same proportion of the aggregate value of the entire property within and without this state as determined by this act of such corporation as the number of miles employed in the state bears to the total number of miles employed by such company, the assessment herein provided for shall include the office fixtures, teams, wagons, and other apparatus of said companies."

19. Benefits against lands were assessed with reference to their location only (R., 53), and the houses and improvements on lands and the value of lands were disregarded by the assessors (R., 54). The pipe line is located on leased lands, nine one-hundredths (9/100) of an acre per mile. It was a discrimination to assess the pipe line and omit the benefits to houses, improvements on the lands of the district.

ARGUMENT.

I.

Erroneous Finding of Fact by Circuit Court of Appeals With Reference to the Assessment.

Beginning with the 19th line, R., 225, the court of appeals said: "The assessment here is what is denominated as a general improvement tax laid against the real property owned by appellee in the district on an *ad valorem* basis."

Section 7 of Act 153 (R., 174), and Section 6 of Act 15 (R., 188), requires the assessors to assess the lands and utilities in the district according to benefits; nothing is said about *ad valorem* tax for general taxation. The only witness who testified upon this proposition as to how they reached the assessment was Geo. T. Conway. He testified that the lands of the district were divided into zones, 1, 2 and 3, and the lands were assessed without regard to improvement, clearing or value, at $30, $25, and $20 per acre, according to location. That they did not take into consideration any improvements, although this was an agricultural district, having plenty of houses upon the farms. As to the pipe line, occupying 9 100th of an acre per mile, they assessed it at $5,000 per mile; in other words, this small strip of land is assessed for the improvement thereon, which meets the finding of the court that the pipe line was not assessed as to the other property.

The only consideration given to *ad valorem* tax was that as applied to the lots in the City of Texarkana.

The assessors found the *ad valorem* assessments for the town property and added an equal amount for benefits, but they had no authority to do that from the acts creating the district and authorizing the assessment.

Assuming that the assessment for general taxation was uniform throughout the district, it will be seen from the testimony of L. C. Adams (R., 165-166) that property was assessed for general taxation at one-tenth of the value. (See his testimony.) That the rich lands in Miller Levee District No. 2 (which included 90,000 acres of the 136,000 of the whole district) were worth $100 per acre where cleared and in cultivation, and the woods lands were worth $40 per acre. It was assessed, according to the testimony of Paup (R., 158), at $10 per acre and $4.50 per acre, and the lands and hills were assessed from $4.50 to $6.00 per acre.

It is submitted that the assessment against the pipe line bore the interpretation of the district court in its findings. It was not laid upon the same plan that was followed with regard to other lands in the district, and that it was palpably arbitrary.

The assessors in fact had no rule by which the pipe line was assessed. The court of appeals evidently misunderstood the facts in the case or the above declaration would not have been made.

II.

The Case of Road Improvement District No. 1, of Franklin County, Arkansas, vs. Missouri Pacific R. R. Co., Decided April 18, 1927, United States Supreme Court Advance Opinions, May 16, 1927, No. 13, 71 L. Ed., 622.

In the above case, $75,686 was assessed against 24 miles of railroad, in behalf of a road district. The suit was brought to annul the assessment of benefits, and "while the suit was pending, the State legislature confirmed the assessments specifically, including that against the railroad, and authorized additional assessments, to be made conformably to the first act, to meet the cost of the proposed changes in the width of the road bed and in other features of the improvement." Both the district court (through Honorable F. A. Youmans, Judge of the Western District of Arkansas, who tried the case at bar) and United States Circuit Court of Appeals, Eighth Circuit, held that the assessments were plainly arbitrary, unreasonable, discriminatory and in violation of the due process and equal protection clauses of the Fourteenth Amendment. There was much evidence introduced to proved that the railroad was benefited, and the supreme court in modifying the decision below, held that there was evidence to show that the railroad was benefited, but not beyond $15,000. The court then said:

> "Our conclusion is that the assessment against the railroad is unreasonably discriminatory insofar as it is based on personal prop-

> erty, and in this respect violates the equal protection clause of the Fourteenth Amendment; *and that it is otherwise so excessive as to be a manifestly arbitrary exaction, and in violation of the due process of law clause of the same amendment.*"

In these respects the finding and holding below are well grounded.

The opinion in the case at bar was filed in the court of appeals on the same day, April 18, 1927, that the foregoing decision was rendered by the supreme court, speaking through Mr. Justice Van Devanter, and it conflicts with the latter decision and is therefore erroneous, in this, that the court of appeals felt bound to sustain the assessment, if there was any benefit at all, in the use of the following language:

> "The tendency of these very late authorities is to greatly narrow the constitutional grounds of objection to assessments of this character. They forbid us to weight the benefits against the burdens and require us to hold in the instant case that under all circumstances there was sufficient jurisdiction for the legislative determination that appellee's property was benefited" (R., 225).

It is submitted that the authorities set out in said opinion, just preceding said quotation, Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, 256 U. S., 658; Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474, and Myles Salt Co. *vs.* Iberia Drainage District, 239 U. S., 478; Thornton

vs. Road Improvement District No. 1, Clark County, Ark., 291 Fed., 527, hold a contrary view to that expressed by the court of appeals.

The decision of the court of appeals also conflicts with the decision of Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708, affirmed by Supreme Court, 261 U. S., 481. The facts in that case show that there was some benefit arising from the improvement but the assessment was so excessive that it could not be sustained, although it had legislative sanction.

The Assessment May be Extended from $60,000 to $240,000.

The legislative acts governing the present road district authorized the assessors to assess benefits annually; but by the third paragraph of section 1 of Legislative Act 83, approved February 14, 1925, not copied in the record, appearing in appendix to this brief, the total assessment of benefits in the aggregate shall *never be diminished;* and by section 4 of said act, the assessment of *benefits shall bear interest at the rate of 6 per cent per annum.*

This suit applies to cancellation of assessment against 12 miles of pipe and wire, which is unidentified of 25.49 miles, which were in existence in 1920, when the present assessment was made. Two independent separate lines have been laid upon the right-of-way since that time, and therefore if this assessment as to 12 miles should be sustained, it would be authority for extending assessments to include the new lines, which in the aggregate would be in excess of $240,000, besides the interest authorized to be assessed annually.

By section 1 of said Act 83, above mentioned, the commissioners are authorized to pave with *concrete, asphalt or other hard surface,* deemed by them most advantageous, any road in the district heretofore constructed, which they find will require such hard surface.

The circuit court of appeals was in error in reaching the conclusion that no relief could be awarded in this case, in the following language (beginning with ninth line from the bottom):

> "It may be observed that the procedure by which the value of the particular property of the appellee was arrived at, and the amount of the benefits determined, *does not commend itself to us as altogether fair, nor is the tax imposed against appellee entirely equitable as between it and other property owners in the district;* but this standing alone is not decisive of the question."

This, we submit, is in conflict with the following excerpt from the opinion of Gast Realty Co. *vs.* Schneider Granite Co., 240 U. S., 55; 60 L. Ed., 526, as follows:

> "If the law is of such a character that there is no reasonable presumption that substantial justice will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law can not stand against the complaint of one so taxed in fact."
>
> Martin *vs.* District of Columbia, 205 U. S., 135.

And in the case of Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708 (affirmed by the Supreme Court in 261 U. S., 481), the court said:

> "In view of what has been said above, it is clear that appellees are benefited; but this does not preclude them from claiming that the amount or relative proportion of the assessment made is void."

III.

The Case of Thomas vs. Kansas City Southern Railway Co., 261 U. S., 481.

In this case the Legislature of Arkansas created, by special law, the Little River Drainage and Levee District of Sevier County, Arkansas, No. 1, and the act creating the district authorized an annual assessment of 6 per cent of the assessed value (for general taxation) of the property within the district. The Court, speaking through Mr. Justice Brandeis, in holding that the assessment which resulted in charging 57 per cent of the burden upon the railroad and 43 per cent upon the 12,000 acres of land, one-tenth of which was in cultivation, was palpably arbitrary and discriminatory, said:

> "The railroad will derive some measure of indirect benefit, because the drained land would doubtless be cultivated, and more extensive cultivation would probably increase traffic over the line."

And the injunction which had been issued against the assessment by Hon. F. A. Youmans, Judge of the

District Court for the Western District of Arkansas, who tried the case at bar (sustained by the United States Circuit Court of Appeals, Eighth Circuit, 277 Fed., 708), was affirmed.

IV.

The Case of Kansas City Southern Railway Co. vs. Road Improvement District No. 6, Little River County, Ark., 256 U. S., 658-661; 65 L. ed., 1151.

In the above case it appears that in levying assessment of benefits upon the railroad track, that the assessors disregarded both area and position, and undertook to estimate benefits without disclosing any basis therefor. As to farm lands and town lots, the assessments were made wholly without regard to their value, improvements thereon, or their present or prospective use. The farm lands were divided into zones and were assessed accordingly by the acre, and the town lots were assessed without reference to value or improvements, according to location. The court held that the railroad company had not been treated like individual owners, and that the discrimination against the railroad was so palpable and arbitrary that it amounted to a denial of the equal protection of the law. Benefits were extended against 9.7 miles of railroad track, $67,900.

In the case at bar, Legislative Act 153, creating the district, in Section 7, 13th line from top of page, R., 174, and Section 8, seventh line from top of page, R., 176, and Act 15, which was a re-enactment of the whole subject; Section 6, 12th line from top of page, R., 188,

and 17th line from bottom of page, R., 188, required all lands in the district to be assessed according to benefits, including pipe lines and other utilities, by the mile. The assessors divided and assessed the lands according to zones; Zone 1, within one mile of the road, $30 per acre; zone 2, within 2 miles of the road, $25 per acre, and zone 3, within 3 miles of the road, $20 per acre (R., 53), but wholly disregarded the value of land by the acre and the improvements thereon, and as to city property the *ad valorem* assessment for general taxation was taken and an equal amount assessed for benefits against such property. It is shown that the assessments for general taxation in Miller County are one-tenth of the value of the property (Adams on cross-examination, R., 168-169; Paup, 158-159). As to the pipe line and wire, benefits were assessed at $5,000 per mile, or $60,000, without any apparent reason or basis. (See second assessment, R., 57.) Telegraph and telephone lines were assessed $200 and $250 per mile, respectively (R., 4).

Practically the same plan was pursued by the assessors in the case at bar as in Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, *supra*, which the United States Supreme Court, speaking through Mr. Justice McReynolds, condemned and set aside as palpably arbitrary and discriminatory.

In view of this decision the district court made findings as follows:

Findings of the District Court.

In the case at bar the United States District Court for the Western District of Arkansas, on the same

facts held: (1 and 2) That the construction of the highway has not added anything, and will not add anything, to the value or revenue of the pipe line; (3) that the levy of a tax of $5,000 a mile upon plaintiff's pipe line is not laid upon the same plan that is followed with regard to the other lands in the district; (4) that the levy of $5,000 a mile is palpably arbitrary; (5) that the alleged benefits to plaintiff's property by construction of the highway is speculative and conjectural; (6) plaintiff is not estopped from maintaining this suit; the act of the legislature purporting to validate generally the levy of the tax made by the defendant upon the property in the district is not effective to validate the levy upon plaintiff's pipe line, because as to plaintiff's property such levy is arbitrary. #31-32.

We respectfully submit that the reversal of each of these findings was error and based on a clear misapprehension of the facts.

Act No. 83, approved February 14, 1925, in Aid of Miller County Highway and Bridge District.

Attempted Confirmation of Assessment.

The United States Circuit Court of Appeals, in the case at bar, referred to the above act in the following language: "Under a third act, relating to this district, being number 83 of the year 1925, the legislature declared that the assessments for benefits made by the district to be just, equitable and proportionate, and ratified the same" (R., 219).

The contention of the petitioner, appellee in the lower court, was that the assessment of 12 miles of

pipe line against the Prairie Pipe Line Company (from which the Standard Pipe Line Company, Inc., petitioner herein, purchased December 1, 1922) was void for misdescription. The uncontradicted evidence shows one pipe line was laid in this territory 1909, another distinct line paralleling it, 1915, and that the aggregate length of these two lines in the district was 25.49 miles (R., 73).

This description, we submit, was not sufficient to put the owner of these lines upon notice or to require them to appear before the board for the purpose of correcting the assessment. It would appear that this subject is somewhat similar to misdescription for lands for general taxation, and while the lien may exist, yet without correction or some kind of proceeding, the taxpayer would not be subjected to the penalties or loss of his property for failure to pay the tax. A purchaser at a foreclosure sale under this description would be at sea in asserting his claim to any part of either pipe line, unless in that suit the court should reform the description so that a particular part of the property involved could be subjected to the lien. It has not been claimed, and cannot be, that the omission to appear before the board of assessors was willful or contumacious, but for the simple reason, as elsewhere shown, that the officers of the company had absolutely no notice of either of these assessments until after the time for appearing had expired. We, therefore, have this to say, that if these pipe lines were benefited, there can be no doubt of the right to re-assessment under

Section 6 of Act 15, as amended by said Act 83 of the year 1925.

But it is submitted that the attempt of the Legislature, under Act 83, to confirm an assessment void by reason of misdescription, is ineffectual and can add nothing to it, and should not stand as a bar to bill in equity to remove the cloud from the title of the petitioner.

V.

There Were Two Distinct Pipe Lines In the District When Assessment Was Made, Aggregating 25.49 Miles In Length. The Assessment Was Against Twelve Miles. This So Indefinite As To Be Void and Incapable Of Being Cured By the Legislative Act.

A very clear summary of the decisions of the Arkansas Supreme Court is contained in Woodall *vs.* Edwards, 83 Ark., 337, with references to insufficiency of description in tax proceedings.

In that case Hill, Chief Justice, said (omitting quotation marks):

> This case was tried on an agreed statement of facts, which will be set out by the reporter. The tax title of the appellant was held void, and further that it *was not color of tax title* enabling the *statute of two years' possession under a tax sale to be effective.* And that is the sole question on appeal.

The description in the deed is as follows: "Part N. E. ¼, Sec. 30, T. 9 N., R. 9 E., containing 70 acres."

This description followed the description in the assessment.

In Hershey *v.* Thompson, 50 Ark., 484, it was decided that a description as follows: "Part of the S. E. ¼ of Sec. 15 in T. 8 N. and in range 32 W.," was void, in that it failed to identify the part assessed from other lots or tracts as required by the statute, and that in fact it was no description.

In Schattler *v.* Cassinelli, 56 Ark., 172, this description was considered: "E. part of N. ½ of S. E. ¼ of S. E. ¼" of section containing 7.54 acres, and the court said:

> "A description which can be understood and *made definite only by judicial construction does not accomplish the essential functions* of a description in *tax proceedings;* and, as the law requires one to be made for the practical purpose of protecting the owner, any that conveys no certain meaning to persons ordinarily versed as to such matters does not answer the requirement."

In Cooper *vs.* Lee, 59 Ark., 460, a description of "the N. N. E.," of a section containing 87.19 acres in a tax sale was held void, and the court approved Judge Cooley's statement of the purpose of the description of lands in tax proceedings; "First, that the owner may have information of the claim made upon him or his property; second, *that the public,* in case the tax is not paid, *may be notified what land is to be offered* for sale for the nonpayment; and, third, that the pur-

chaser may be able to obtain a *sufficient conveyance.*" The court said:

> "A description which is intelligible only to persons possessing more than average intelligence, or the use and understanding of which is confined to the locality in which the land lies, is not sufficient."

In Rhodes *vs.* Covington, 69 Ark., 357, the court held that this description, "L. B. R. W. Pt. southwest quarter of section 30, township 5 north, range 4 west," was void, even assuming that "L. B. R." meant the left bank of the river on which the land was situated, as it was vitiated by the terms "W. Pt." which left an indefinite quantity.

In Dickinson *vs.* Ark. Imp. Co., 77 Ark., 570, the decription in question was as follows, "Part East ½ N. E. ¼ Sec. 32 T. 12 S. R. 1 W., 55 acres," and the court said that the *two year statute of limitations* did not run under a deed containing *such description* because "a deed failing to describe the land is equivalent to no deed at all. In order to put this statute in operation, the adverse holding must be under a deed purporting to convey the land pursuant to a tax sale. The deed under which appellants claim to have held *does not purport to convey the title to any land,* because none is described therein.

In Buckner *vs.* Sugg, 79 Ark., 442, the Court said:

> "It is well settled, not only by the decisions of this court, but by the adjudged cases in the courts of other States, as far as we can discover, that, in order to make a *valid assessment and*

sale of land for taxes, the land must be described with certainty upon the *assessment rolls* and in all subsequent proceedings for the enforcement of payment of tax. The chief reason for this requirement is that the *owner may have information of the charge upon his property.* It has sometimes been said that *a description that would be sufficient in a conveyance between individuals* would generally be sufficient *in assessments for taxation.* We do not, however, consider that the safe test. The description in tax proceedings must be such as will fully apprise the owner, without recourse to the superior knowledge peculiar to him as owner, that the *particular tract* of his land *is sought to be charged with a tax lien.* It must be such as will notify the *public* what *lands* are to be offered for sale in case the tax be *not paid.*

"The two-year statute is the shortest limitation statute barring recovery of land. It applies to void tax sales as well as valid ones, yet it must not be extended to deeds void for uncertainty in description of the land conveyed. Such a deed can not aid or explain possession, for it lacks an identification of any land. *Neither the owner nor the public were bound to take knowledge of any tax proceedings against land so described* and the title alleged to be conveyed by such deed, and *hence possession under it* would confer *nothing more* than possession without any deed, and it would require seven years of adverse possession of the land to give title."

The foregoing summary just quoted from Woodall *vs.* Edwards, 83 Ark., 334, is abundantly sustained by the following subsequent authorities:

A tax deed which describes the land sold for taxation as part of a certain forty-acre tract is void on its face.

Penix *vs.* Rice, 93 Ark., 176, 124 S. W., 747.
Morris *vs.* Eagle, 94 Ark., 180.

Where the lands sold for delinquent taxes was described in the tax proceedings and in the deed to the purchaser as "W. pt. S. E. S. E. 20-20-33, 7.60 acres," such description was insufficient, and the sale void therefor.

Hewett *vs.* Ozark White Lime Co., 120 Ark.. 528, 180 S. W., 199.

The case of Hershey *vs.* Thompson, 50 Ark.. 484, *supra,* is one of the most illuminating decisions of the Arkansas Supreme Court upon this question, announced through Judge B. B. Battle, one of the State's former greatest judges.

In holding that a description "Part of the S. E. ¼ of N. E. ¼ Section 15, T. 18 N. R. 32 W.," was void in a tax deed, Judge Battle said:

> "In the assessment of lands for taxation the statutes of this State provide that the description of each tract or lot of real property shall be such as to identify it and distinguish it from all other tracts or lots. The object of such description is to inform the owner and all other persons of the tracts and lots assessed and the amount of taxes levied thereon. From the description given of the tract purchased by appellant for the taxes of 1878, it cannot be ascertained what part of the southeast quarter of

> the northeast quarter of said section fifteen, containing five acres, was assessed. In fact, there was no description, and the assessment of this indefinite and unknown part was void."

Judge Battle further said in denying a claim under a State statute for betterments:

> "To succesfully assert a claim for improvements, it is said, an occupant must ordinarily show not only that he occupied and claimed the land in good faith, but also under color of title, *i. e.*, under some instrument or paper writing presenting the appearance or semblance of title. A deed which contains no designation or description by which the land intended to be conveyed can be identified presents no semblance or appearance of title, and does not constitute color of title. Such deeds themselves put the holder on notice that they have no title. They do not purport to convey anything and are void. Such is the deed under which appellant claims. No one can be heard to say he has been misled by such a deed."

It is therefore submitted that the attempt of the Legislature to confirm the assessments in the case at bar against 12 miles of pipe line, which was a part of 25.49 miles of pipe line in the district was ineffectual.

As to the wire, the evidence shows there is a single strand running almost at right angles from the pipe line, from Mandeville to Texarkana, and thence to Index, a distance of 17 miles, and was not upon the right of way of pipe line, and the assessors undertook to assess it jointly with 12 miles of pipe line. The pipe

line did not own the right of way and the assessment does not purport to assess all the pipe in the district or the right of way upon which two distinct pipe lines were laid.

Aid From Cooley On Taxation, Vol. 1, 3rd Edition.

Mr. Cooley, in his work, Cooley on Taxation, 3rd edition, Volume 1, page 738, says:

> "The authorities in general are imperative in holding that an unauthorized division of a tract in the assessment, which tract has no known legal subdivisions, is as fatal as an unauthorized grouping of distinct parcels would be."
>
> Reading *vs.* Finney, 73 Pa. St., 467.
> Wyman *vs.* Baer, 46 Mich., 418.
> Morgan *vs.* Smith, 70 Tex., 637.

Mr. Cooley says with reference to amendments of assessments, in Cooley on Taxation, Volume 1, 3rd edition, pages 544-555:

> "Thus it has been held in Vermont that if a tax sale is fatally defective by reason of the failure of the town clerk to certify in his record that the advertisements were published as required by law, the clerk cannot make it good, by amending his record after the time for redeeming from the sale has expired. The reason is that the owner, relying upon the record, may have omitted to redeem, inasmuch as his land has not been legally sold.
>
> "No amendment can make valid a tax sale that was void for want of a proper description

of the land in the assessment and subsequent proceedings."

Roberts *vs.* Chan Tin Pen, 23 Cal., 259.

We quote from Mr. Cooley's Work on Taxation, Volume 1, 3rd Edition, page 742:

"The purposes in describing the land are: First, that the owner may have information of the claim made upon him or his property; second, that the public, in case the tax is not paid, may be notified what land is to be offered for sale for the non-payment, and, third, that the purchaser may be enabled to obtain a sufficient conveyance."

On page 744 we quote:

"The reason for this is the recognized principal that it is the land, and not the owner, which is chargeable and to be charged with the tax. It must, however, be susceptible of identification as the land assessed, otherwise the sale would be void."

Woodsie *vs.* Wilson, 32 Pa. St., 52.

And we quote further, on page 748 of Mr. Cooley's work on taxation:

"But where the description in an assessment could apply to either of two pieces of land, it is void for uncertainty, *as is also a description, which is part of a section, block or lot, without showing how much or giving boundaries.*"

Texarkana Water Corporation *vs.* State, 62 Ark., 188.

See many cases sustaining this principle in Footnote, Volume 1, Cooley on Taxation, 3rd Edition, page 748.

Legislature Cannot Confirm an Assessment Void for Insufficiency of Description.

With reference to the special curative acts, purporting to validate the assessment against the pipe line, we quote from Cooley on Taxation, 3rd Edition, Volume 1, page 514:

> "One very precise limit to the power to cure these proceedings is this: they cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all. And in this regard the rules which apply to retrospective and to prospective healing acts are the same."
>
> Wall *vs.* Wall, 124 Mass., 65.

It will be remembered that there were two pipe lines owned by the Prairie Pipe Line Company when the assessment was made in 1920, aggregating 25.49 miles (R., 73). They were separate and distinct, and differed slightly in length. One was laid in 1909 and the other in 1915 under land by virtue of permissive contracts with the owners. The right-of-way contract provided that the pipe line could lay other pipe lines under the surface of the same lands upon payment of a like consideration as had been paid (R., 86). The assessment being against 12 miles of pipe line, it cannot

be determined which of the pipe lines or which miles of pipe were intended, and therefore the assessment was invalid and the curative acts attempting to validate the assessments were void.

VI.

Questions of Estoppel.

The Court of Appeals Misunderstood the Facts Upon This Question, and Mis-applied the Legislative Acts Involved.

This case was argued orally and by brief at St. Paul in the United States Circuit Court of Appeals, before Stone and Lewis, circuit judges, and Symes, district judge, May 26, 1926 (R., 218), and the opinion was filed by District Judge Symes April 18, 1927 (R., 225).

The recitals of the opinion, it is respectfully submitted, show that the facts in this case were misunderstood by the court of appeals, and as a consequence the decision of the lower court was reversed.

One of the propositions involved under this heading was whether or not the petitioner herein was estopped from prosecuting this suit for cancellation of the assessment of July 24, 1920 (R., 51), for alleged benefits of $60,000 on 12 miles of pipe line and wire, as a cloud upon petitioner's title thereto, on the ground that it had failed to avail itself of administrative remedies providing for the correction of the assessment.

See second paragraph (giving the right of appeal from the commission to the county court—R., 175) of Section 7, Act 153, approved March 5, 1915.

Also four lines, beginning with the second line from the top of page, R., 189 (making the decision of the commissioners final), Section 6, Act 15, approved January 29, 1917.

We now quote from the opinion of the court of appeals:

> "The Miller County Highway District was created by a special act of the legislature of Arkansas in 1915, and empowered to construct 60 miles of highway and a bridge over the Red River. The usual district organization, consisting of a commission of three resident land owners, was provided for, with the power and duty to appoint three assessors to assess all benefits accruing as a result of the improvements to the real property within the district, including railroads, pipe lines, etc., and all other franchises connected with the realty in said district. Later it was concluded that the bridge and roads could not be constructed within the limit of cost prescribed by the original act, towit, 15 per cent of the value of the real property subject to assessment; so the law was re-enacted and amended by Act No. 15 of the year 1917, and additional land included. This amendment ratified and confirmed the assessment theretofore made by the assessors, and provided for a similar assessment on the new lands, and increased the authorized mileage to 75 miles."

This statement is literally correct, but the assessment that had been made, which this act attempted to ratify, was for benefits to accrue from building 60 miles of road and a bridge across the river, and the

amount assessed against the 12 miles of pipe line was $59,340. Its date was April 29, 1916 (R., 55). A bridge district was organized, under Act 16 entitled "An act to create Red River Bridge District," covering the same territory, approved January 29, 1917, and providing for assessment of benefits on account of the bridge. This bridge district is involved in this case only in so far as the fact exists that it was made the subject of a new district, under a distinct act (R., 196-207).

Did the Arkansas Legislature have the power to adopt the assessment of benefits on account of 60 miles of highway and a bridge across Red River, as the benefits under changed plans for 75 miles of highway without the bridge?

It has been shown in the testimony and all the proceedings in this case that the assessment ratified, however, is not the one involved in this case. The assessment in controversy was made July 24, 1920 (R., 51), and the 12 miles of pipe line and wire were reassessed benefits at $60,000 (R., 57). The board of commissioners ordered a general reassessment of all property in the district on account of change of plans (R., 56).

The authority of the board of commissioners to authorize the assessors to make this reassessment is contained in the same section of Act 15 (see eighth line from top of page R., 188, Section 6), which ratified the first assessment.

> "If either the board or any individual thinks that by reason of said changes of the plans the assessment heretofore made has become in-

> equitable, *a new assessment of benefits shall be ordered by the board*, and the board may, not oftener than once a year, order a reassessment of the benefits in the entire district; but in no event shall the total amount of the assessed benefits in the district ever be diminished."

The court of appeals also erred in the following statement (R., 222):

> "The original act (153) provides an opportunity for all property owners aggrieved to appear before the Board of Assessors and have a hearing, with right to appeal to the Commission, and from the Commission to the *county court*. The appellee never availed itself of this remedy. *They say that because they were a non-resident corporation, they are not bound thereby.* The record shows that they had employees in the district, including a taxing officer, charged presumably with the duty of looking after tax matters. Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest. There is testimony that Mr. Hilford, who at one time had charge of the pipe line property in Miller County, knew the assessments were being made. Another witness testified that a letter was written by the *Tax Commission* to the pipe line company, giving them the information as to both the county, State and road taxes, under date April 5, 1917, receipt of which was acknowledged."

Aside from the fact that the original assessment, which was ratified and remained ratified, until it was abrogated, July 24, 1920, by the Commissioners under

authority of Section 6, Act 15, it is contended here, as it was in the court of appeals, that the remedy of appeal from the Commissioners to the county court was not only insufficient, but was absolutely void, as the Arkansas County Court has no jurisdiction beyond the limited powers given by the constitution as a probate and administrative court.

This question is concluded by a decision of the Supreme Court of Arkansas, in the case of Morgan Engineering Company *vs.* Cache Drainage Dist., 115 Ark., 437, at page 441, where it is held that jurisdiction cannot be conferred upon the county court to settle a controversy arising under the administration of a special legislative act.

This interpretation by the Supreme Court of Arkansas was fully recognized as controlling in the fact that Section 2 of Act 83, approved February 14, 1925, amending Section 6 of Act 15 (R., 188-189), provides for an appeal from the Commissioners to the chancery court, a court of general jurisdiction, see said Act 83, Sec. 2, in appendix to this brief, as it is not copied in the record, but that remedy of appeal by said amendment was too late to afford relief under either the first or the second assessment.

The thorough, able and exhaustive opinion by Chief Justice Taft, in Road Improvement District No. 2, Lafayette County, Ark., petitioners, *vs.* St. Louis Southern R. R. Co., 257 U. S., 547-562, involved the interpretation of Acts of Congress authorizing removal of causes from State courts, and this decision was cited by respondents in the court of appeals as holding that the county court had jurisdiction to entertain an ap-

peal from the Commissioners. There is a clear distinction between the jurisdiction of the county court, Chapter 81, Title "Highways," Subdivision 7, Crawford & Moses Digest of the Statutes of Arkansas, 1921, whereby the county court is authorized to build a road under its constitutional jurisdiction over public roads, and that in this case, where appellate jurisdiction is attempted to be conferred by legislative act upon a controversy over assessments arising under a special legislative act.

The Federal courts will accept the interpretation of the supreme court of a State upon its statutes.

A. G. Risty *et al. vs.* Chicago, Rock Island & Pacific Railway Co., 270 U. S., 378-390 (opinion by Mr. Justice Stone).

With reference to that part of the opinion of the court of appeals, that there were employees in the district, including a taxing officer (charged presumably with the duty of looking after tax matters), we have to say there were two taxing officers of the pipe line company, mentioned in the evidence; the first named, Van Tuyl (dead when the evidence was taken in this case), and his successor, H. C. Black. They had no notice of either the assessments within the thirty days time in which to ask for relief.

The letter referred to which Van Tuyl received from the deputy collector, A. B. Little (not Tax Commission), was dated April 15, 1917, notifying him of the error committed by the collector, in furnishing a tax list for the year 1916, in which the collector had overlooked, including the special road tax of $395.20 (R., 68). This was the first actual knowledge that the

petitioner had of the road tax, and the first assessment of benefits had previously been filed April 29, 1916 (R., 45). In the statement furnished Mr. Van Tuyl it was shown erroneously that the entire road tax would be paid out in 15 annual payments of $395.20, total $5,934 (R., 71). Each Act, 153 and 15, also furnished a strong regulation compelling the payment of the road taxes when the general taxes were paid by any person or company liable for the road tax, by fixing a penalty against the collector of $100 in each case if he received the general taxes without the road tax. This would have incurred a penalty of 25 per cent on the general taxes if the payment had not been made.

With reference to that part of the statement above-quoted, "the Prairie Pipe Line Company (predecessor of the Standard) paid three or four installments of these taxes without protest," the taxes were paid for three years, under the circumstances and requirements stated above, for 1916, $395.20; 1917, $395.60; 1918, $406.01 (Black R., 101).

The court of appeals erred in considering the payment of taxes for these three years on the assessment of 1916, as an estoppel to contest the second assessment of 1920.

Under the new assessment of 1920, the taxes were increased against the pipe line to $600, none of which have been paid (R., 112).

Then suit was brought by the Prairie Pipe Line Company to enjoin the collector from not accepting the general taxes without the road taxes, and the su-

preme court sustained the contention, and required the collector to so receive said general taxes.

Eason *vs.* Prairie Pipe Line Company, 149 Ark., 669.

Road taxes have been assessed annually since that time, but no payment has been made by the pipe line company.

With reference to the knowledge of Mr. Black, who succeeded Van Tuyl, he testified that he came to Texarkana in the spring of 1921 to pay the general taxes, and for the first time he learned that the second general assessment of benefits had been made the previous year, July 24, 1920, which was too late for relief by the Commissioners.

As to the reference in the opinion above quoted, to one Hilford being in charge of the pipe line property in Miller County, and knew the assessments had been made, there is no direct or positive testimony that he knew the assessments had been made. He was dead at the time the trial took place, but it was shown by Black that he had nothing to do with accepting notice or reporting upon the subject of taxes, and that his only duties were to see that the pipe lines were in shape, and that the station ran when he was told to run it (Black., R., 110).

With reference to that part of the opinion of the court of appeals above quoted, "they (the petitioner) say because they are a non-resident corporation, they are not bound thereby" (the assessment); the court of appeals misinterpreted the plaintiff's contention. The plaintiffs claimed that by reason of its non-residence,

it had no actual notice of the assessment (which was published in a local paper with limited circulation), and it was not estopped from instituting this suit to prevent the taking of its property without due process of law, and denying it the equal protection of the laws. This was the course pursued in a similar case, Thornton *vs.* Road Improvement District No. 1, Clark County Ark., 291 Fed., 527. The opinion was announced for the United States Circuit Court of Appeals by Judge Sanborn, and the other judges with whom he sat in that case, were Circuit Judge Kenyon and District Judge Symes.

We have thus gone into some detail for the purpose of showing that if there had been no second assessment, which superseded the first, that there was no adequate remedy provided for relief in the first assessment before the Board of Commissioners, and by appeal to a court which had no jurisdiction.

No Adequate Remedy was Provided for Relief Against Errors in the Second Assessment of July 24, 1920.

The administrative remedy provided for under this assessment in Section 6, Act 15, affords no more relief than Section 7 of Act 153, governing the first assessment. The court of appeals did not mention the alleged remedy provided for correcting the second assessment, which is the only assessment that is outstanding.

The assessment of 1920 took the place of the assessment of 1916, under which assessments had been paid for 1916, 1917 and 1918, but since the assessment of

1920 no assessments have ever been paid by anyone under the 1916 assessment.

Under Section 6 of Act 15 (R., 187-189) a complaining taxpayer was permitted to appear before the Commission for the purpose of correcting unequal assessments, but said Commission only had the right to increase or decrease the assessment (see bottom page, R., 188), and did not have the right to give full relief where there was no benefit. In the 13th line from top of page (R., 188) the act reads:

> "But in no event shall the total amount of the assessed benefits within the district *ever be diminished;* and if any future assessment shall be for an amount less than the preceding assessment of benefits, such assessment shall be void, and the preceding assessment shall be continued in force."

Finally, it was provided at page 189, beginning with the 2nd line:

> "Any property owner aggrieved by the action of the Board of Assessors, may appeal to the Commission, within thirty days, and the Commission shall meet at some convenient time and hear all appeals, and determine the same, *and their decision shall be final.*"

It is submitted that no one should be expected to present his claim before a board of commissioners whose authority to make changes was so hedged and obstructed by the fact that the entire assessment could not be reduced, and whose decision would be final.

As previously shown, the pipe line owned two adjoining tracts, near Mandeville, one containing 40 acres and the other 31.5 acres, upon which the tanks and pumping station are erected. They were assessed both in the first assessment and in the other assessment, as other lands in the district (R., 61). The assessment against this land is not in controversy.

With reference to the contention of Miller County Highway & Bridge District that the petitioner predecessor Prairie Pipe Line Company did not avail itself of the administrative remedies provided for in Section 7 of Act 153, approved December 5, 1915, by going before the Commissioners and presenting the complaint and appealing to the *county court*, we have answered fully in the foregoing brief upon the merit of the proposition, as though there had been no new general assessment. We should have been content to submit the question solely upon the fact that there was a reassessment made on July 24, 1920, by authority of the same section (6) of Act 15, which took the place of the first assessment. The second assessment was made three years thereafter, and gave a purported remedy for contesting it, and we think it was error for the court of appeals to have rested its decision in any respect upon the failure to appear before the Commissioners, from which anpeal could be made to a county court which had no jurisdiction to hear it. The court undoubtedly overlooked the fact that there was a reassessment and a right to reappear and make a contest before the Commission.

But as to that, we have already answered in the foregoing argument. The provision with reference to

contesting the new, substituted reassessment, only provides for a complaining taxpayer to appear before the Commission, whose ruling should be *final.*

The remedy provided by the second assessment is more faulty than the first. It was not mentioned by the court in its opinion, and seems to have been entirely overlooked. We are led to believe that if the court had looked at that provision, it would not have laid any stress at all on the failure of the petitioner to submit *all its rights to a final* determination by the Commission.

The authorities with reference to inadequacy of the remedy at law and the right to proceed in equity in this kind of case seem to be one way. We will not quote from them at length, but will submit the citations:

Road Improvement District No. 1, Franklin County, Arkansas, *et al.*, appellants, *vs.* Missouri Pacific R. R. Company, appellee; decided by the Supreme Court of the United States, April 18, 1927; see United States Supreme Court Advance Opinions, May 16, 1927, No. 13, 71 L. Ed., —.

George Wallace *vs.* Walker D. Hines, 253 U. S., 782; opinion by Mr. Justice Holmes.

C., R. I. & P. *vs.* Risty, 270 U. S., 378.

Munn, county treasurer, *vs.* Des Moines National Bank, 18 Fed. Rep., 2d Series, 269.

Nevada-California Power Co. *vs.* Hamilton, county treasurer, 235 Fed., 316.

Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708.

Kansas City Southern Ry. Co. *vs.* Ogden Levee Dist., 15 Fed. Rep., 2d Series, 637.
Kansas City Southern Ry. Co. *vs.* May, Volume 2, Fed. Rep., 2d Series, 680.
C., R. I. & P. *vs.* Risty, 297 Fed., 710.
C., R. I. & P. *vs.* Risty, 282 Fed., 364.

We therefore respectfully submit that the United States Circuit Court of Appeals was in error in reversing the judgment of the District Court of the United States for the Western District of Arkansas, Texarkana Division.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

September 17, 1927.

THE TESTIMONY.

It is unnecessary that we should give a summary of the testimony introduced in this case bearing upon the material points. The assessors were required by the legislative acts to make assessments of the lands and utilities in the district, according to the benefits received, and their method and the discrimination resulting is shown by the testimony of one assessor (Geo. T. Conway), who testified (R., 53-65), as follows:

George T. Conway.

> "The territory outside the city was divided into zones, the land within one mile of the road was zone 1, within 2 miles, zone 2, within 3 miles of the road, zone 3. The benefits were assessed at $30.00 per acre for zone 1, $25.00 per acre in the second zone, and $20.00 per acre in the third zone. We did not take into consideration the value of the land itself, but simply its location with reference to the road, and did not take into consideration the dwellings. There were plenty of houses throughout the District, and a great part of this land was in cultivation" (R., 53-54).

With reference to the pipe line, the witness said:

> "The assessment was extended against poles, pipe, wires, plant, tankage, etc., in the District" (R., 54). "Could not say whether there were any poles" (R., 54).

As to what pipe there was there:

> "Well they come into Miller County at Red River, and went out of Miller County at the lower end" (R., 54).

Assessments of Benefits Palpably Arbitrary.

> "We figured that a pipe line and what they had there would derive that much benefit from this road. We took into consideration all that we thought would have any bearing, and the elements were, we considered these people, the Prairie Pipe Line Company, their pipe line and their telephone line, to their pumping station and tanks, which was practically wholly within this District, would receive benefits from this road amounting to $59,340.00" (R., 55).

Later the witness showed that the benefits against land of the company on which their tanks and buildings were located, consisting of 71.5 acres near Mandeville, were assessed separately, $30 per acre, the zone plan (R., 59, 62), and no contest is made herein as to that assessment (R., 61).

The foregoing assessment was made April 29, 1916 (R., 45), under Act 153, providing for construction of sixty miles of road and a bridge across the river (R., 56).

Four or five years later (the witness stated), July 24, 1920 (R., 51), there was a re-assessment made by order of the Board of Commissioners. The lands outside the city were assessed in the same way as before (R., 56), and Prairie Pipe Line Company, 12 miles

pipe line, and twelve miles, telegraph and telephone line, $5,000 per mile, or $60,000 (R., 57). This took the place of the first assessment (Josephs, Secretary of the District), (R., 46).

The benefits on lands in Texarkana were arrived at *ad valorem* basis (R., 57). This was an entirely new thing in this country, and we did not know where we were (R., 57). The benefits on city property was assessed the same as *ad valorem* valuation (R., 61). The pipe line was not assessed on *ad valorem* basis (R., 65).

> "The roads as originally laid out did not conform to the roads as built and there were some that were in zone 3 that should have been in zone 2 and *vice versa*, and these readjustments were made (by a general readjustment, July 24, 1920), so there was an equal benefit according to the zone as they were finally build" (R., 62).
>
> "The zone system was followed in the reassessment as in the first, also was applied to the 71.5 acres, the plant of the pipe line $2,160.00 (R., 62). The re-assessment was made general under Act 15, approved January 29, 1917, by authority of the same section (R., 187-188), which attempted to ratify and confirm the first assessment of benefits." The language authorizing the re-assessment, "And if either the board or individual thinks that by reason of said changes in the plans the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board."

The assessor said the total benefits to the pipe line (which did not include the land on which plant is lo-

cated, assessed separately), Prairie Pipe Line Company, 12 miles pipe line, and 12 miles telegraph and telephone lines, $5,000 a mile, or $60,000 (R., 57).

> "Q. How did you arrive at the benefits of $5,000.00?
>
> "A. Because we thought they were benefited that much. We thought a pipe line coming in and a telephone line would be a greater benefit than a telephone line located where they didn't have any road. Another thing, they had the pumping station and they would use the road in going to and from their work.
>
> "Q. The Prairie Pipe Line Company owned certain lands out here at Mandeville?
>
> "A. I am not positive of that" (R., 57).

F. Ray McGrew.

I am the vice-president of appellee, and have been such since its organization. The Standard Pipe Line Company, Inc., purchased the pipe lines of the Prairie Pipe Line Company in Arkansas in December, 1922, at which time there were two lines of eight-inch pipe in this district, and later the Standard Pipe Line Company, Inc., laid additional lines of pipe, at which time we acquired from the various owners of property by purchase the right to lay these additional lines. Prior to the time we constructed the additional lines (which was in 1923), we negotiated for the additional right-of-way upon the same consideration as when the original lines were laid, *and when these additional lines were laid in 1923 we paid for the privilege the same as was first paid.* I am familiar with the lines of road and boundaries of the road district in a general way,

and the value of this pipe line has not been enhanced by the construction of the roads. There are no roads that you might consider as paralleling our lines. It might be said that when a road parallels our pipe line right-of-way for a limited distance at a remote point, remote from the pipe line, in the matter of pipe line construction consideration to roads is never given. To project a pipe line from one point to another, generally we put a straight rule on the map and let it fall where it may, and that is the point where we generally construct the line notwithstanding any connection with good roads. The shortest distance that a pipe line can be constructed between two points is the best. It shortens your line of transportation, increasing volume and lessens the cost. Our transportation is carried on chiefly over the right-of-way of the pipe line, and if we were to dispose of this line to someone, the fact that these highways existed would not have any bearing upon its value. *Good roads might be construed in connection with the railroads as feeders and act as a factor in increasing the revenue of the railroad; that is not true in connection with the pipe line. By no stretch of imagination can I figure that the improvement of roads within this district has been of any benefit.* I have different ideas from a personal view point as to the necessity of good roads. The lines which we purchased from Prairie Pipe Line Company were erected in 1909 and 1915, which was before the construction of the roads by appellant. *We have never paid any taxes to appellant road district. At the time of the assessment of benefits made in July,*

1920, we neither had the right of way nor privilege to lay the additional lines in 1923, nor the materials with which to construct the same. *Line walkers usually patrol about forty miles of pipe line, usually covering the same twice a week.* As to practical pipe line construction, I have had twenty-five years' experience, and have occupied every position that is available on pipe lines with one or two exceptions. The pipe line of Standard Pipe Line Company, Inc., enters Arkansas about 12.38 miles northwest from De Queen at the Oklahoma-Arkansas State line, and runs southeast to a point on the Arkansas-Louisiana State line, near Ida, *and said company is engaged in no business whatever except the transportation of oil from the Oklahoma-Arkansas State line to some point in Louisiana.* Generally the life of a pipe line is *twenty years.* In 1920 replacement cost of an eight-inch pipe line would be $11,500; in 1915 it would be between $8,000 and $9,000 per mile. Depreciation is figured at five per cent, and these lines that were put down in 1909 and 1015 were not worth as much in 1920 as they were when they were put down. The value of these lines in 1920 would be the difference in construction costs less depreciation. There have been no major repairs necessary on the pipe line in this district *with the exception of the removal of a piece of line near the river, a part of that line was taken up and placed on a new right of way.* The changes were not done on account of bad conditions alone, but in order to meet our condition at the river we re-aligned our pipes and at the same time took advantage of the repairs that

were necessary, and there have been no major repairs, no serious breaks or anything of that kind since we have been operating the line. Unless the roads were constructed especially for the purpose of pipe line construction, it would not make any noticeable difference in the cost of construction, and the only difference would be in the item of hauling pipe and the construction of the pipe line. The *cost of stringing an eight-inch* pipe line will run *between $375 and $400* (R., 86-93).

It is a general practice of the pipe line operation to have what is called a line walker. They are usually called upon to patrol approximately forty miles and that is usually covered twice a week, that is a round trip within the week. The patrol is to detect small leaks (R., 89).

We have one automobile located in this district (R., 89).

Whenever there is pipe line work, there are generally workers, no matter where the work is done. *There are a certain class of people who follow the pipe line business just like they follow the circus,* and when we have a camp and construction work in a place where you haul the men, the laborers are paid the same. The crossing of the improved highways presents an additional expense to us, in that we have to meet certain expenses and requirements of the good roads. To construct a pipe line across an improved highway, you have to approach the highway on either side, handle the embankment in a particular manner in order to prevent caving (R., 93 to 100).

W. B. Fulton.

W. B. Fulton testified that he is Chief Engineer of Standard Pipe Line Company, Inc., having served in that capacity since the organization of said company, and had eight years' experience with said company and Standard Oil Company of Louisiana, and was familiar with the location of the pipe line within Miller County Highway and Bridge District, *and as of July 4, 1922, there were 25.49 miles of pipe line within said district*, and that *the telegraph and telephone line came down over the Southwestern Bell Telephone Company's poles*, and that said company *owned no poles within said district, but leased the right from the telephone company to string wires on their poles.* The pipe is made of rolled steel, and is bought from the mills and delivered at our unloading points, which is generally on siding along the railroad, and they are unloaded and stacked. The pipe is buried from eighteen to twenty inches. Inspections of the pipe lines are made by an employee called the line walker, and he has a section that he covers and makes the round trip approximately once a week. He carries his own tools with him for repairing and he walks the entire line. He never digs up the line, but notices from the condition of the soil whether there are leaks. The roads have not increased the value of the pipe lines, nor the volume or capacity of the pipe lines. The Standard Pipe Line Company, Inc., *acquired this property in December, 1922*, and there *have been no major repairs* (R., 74). The average length of a joint pipe is

twenty-one feet, and the joints are connected up with collars, and they are screwed into these collars. The line walker has his caulking tools and caulks these joints. None of the roads in this district parallel the said pipe line, and the expense of upkeep has been no less now than it was before said roads were built. The Standard Pipe Line Company, Inc., receives no products for transportation through this district or through this line, and does not sell any of its products in Arkansas, and has no commodities for sale whatever except transportation (R., 72-75).

On cross-examination the witness (Fulton) testified:

At the present time there are 51.25 miles of pipe laid in said district. During the year 1920 there were 25.49 miles in said district. There were two lines in said district during the year 1920, and now there are four lines of eight inch. The telephone line was built on the right of way in 1923, and I have no knowledge of a telephone line prior to that time. In building the line in 1923 we unloaded our pipe at the railroad sidetrack and hauled it out and strung it along the right of way. The pipe was unloaded at Paup Spur, Texarkana and Genoa, and we used trucks and teams over the roads. On account of the expense of rehandling the pipe, it was not our custom to unload the pipe from trucks on the side of the gravel road and then haul the pipe down the right of way with teams.

On re-direct examination, the witness testified:

If trucks hauled the pipe, they were the trucks of appellee, upon which *Arkansas license had been paid.*

The hauling of this pipe and the construction of a new line does not benefit the old line. The roads have not helped us in the construction of a new line, and they did not benefit the old ones. It is not a pipe line until you get it in the ground. We pay no attention to good roads, but mainly to the shortest distance between two points. The main advantage to a farm is the advantage the farmer receives from hauling his products over the road to market. We do not haul any of our products over the road (R., 78 to 85).

At this point there was introduced in evidence the contract for right of way, evidencing the rights of the appellee to lay and maintain its pipe lines under lands within said district.

H. C. Black.

I am tax commissioner for the Prairie Pipe Line Company, and have been since July 1, 1919, and the entire system of Prairie Pipe Line Company is within my jurisdiction, including the line within appellant road district, up until the time Prairie Pipe Line Company sold the same to Standard Pipe Line Company, Inc., December 1, 1922, at which time there were two parallel eight-inch lines, the first of which was laid in 1909, and the second of which was laid in 1915. In 1920 the telegraph and telephone line paralleled the pipe line from the Louisiana line up to Mandeville, and *then it came into Texarkana over some other poles, and from Texarkana went north to Index. It was just*

a wire, no poles. We paid an annual rental for the permission of having our wires attached to the poles of some other company. There was just one Number 9 steel wire of the value of $15 per mile. Seven years have passed and no suit has been brought against the Prairie Pipe Line Company for the collection of any assessment by the appellant road district. Each pipe line occupies a space of not more than nine inches wide, and the *acreage actually used by the company is about 9/100 of an acre to the mile.* The earnings of the pipe lines depend on the charges received for the transportation of crude petroleum oil that has been tendered to it for transportation as a common carrier, depending upon production and the demand, no inexhaustible field of petroleum has even been discovered. The common experience of mankind is that the deposits of oil are being exhausted, and that the old fields are declining in production and new production coming on. When oil ceases to be produced along this line, the system will have no value beyond junk value. It will have no value for transportation purposes (R., 107-114). The construction of roads will not extend nor increase the life of the pipe line.

TESTIMONY OF H. C. BLACK.

No Notice of Assessment—The Authority of J. D. Hillford—Explains Three Annual Payments.

I have been tax commissioner for Prairie Pipe Line Company since July, 1919, having charge and supervision of all activities of the company with reference

to making of renditions of its properties, the payment of taxes upon its properties, and the handling of every item and form of tax with the exception of the income tax. *J. D. Hillford was the local workman in charge of the pumping plant in Miller County, Arkansas, in 1920,* and his only *duties were to have charge of the operation* of the pipe-line properties; he did no business for the company, conducted no business for the company, *and had no authority beyond an operating superintendent, and he was not designated as an agent for this company;* he had nothing to do with any item of business with the Prairie Pipe Line Company. *The Prairie Pipe Line Company did no business in Arkansas, maintained no office, paid no franchise tax in the State of Arkansas, and was engaged solely in the transportation of crude oil in interstate commerce.* The *movement* of the oil through the pipe-line system was *under the pipe-line dispatcher at Independence, Kansas.* The only thing *Mr. Hillford had to do was to see that the pipe lines remained in shape, and that the station ran when he was told to run it. Mr. Van Tuyl was the tax commissioner at the time of the passage of the first act creating Miller County Highway and Bridge District.* In the year 1916 we paid assessment of $395.20 against the pipe lines, and the assessment for 1917 was $395.60, and the assessment for 1918 was for $416.01, which three assessments were the only ones paid by Prairie Pipe Line Company. I never heard of the assessment of benefits in 1920, and never had any knowledge of it until in the latter part of March, 1921, when it was discovered that the taxes

had jumped from $418 to $600. On investigation I *found there had been a re-assessment some months* before, along in July the previous year. After I became tax commissioner for the company, I investigated the tax as levied by Miller County Highway and Bridge District, and I determined not to pay the same any *further and attempted to pay the general* taxes without paying the special tax to Miller County Highway and Bridge District, which the *collector refused to receive unless I paid the assessment*, and *through injunction he was compelled to receive it* (R., 107-113).

Eason *vs.* Prairie Pipe Line Co., 149 Ark., 669.

Right of Way.

The right of way contains the following provision:

> "We the undersigned hereby grant (to the Pipe Line Company, its successors and assigns) the right of way to lay, maintain, operate *and remove* pipe lines, for the transportation of oil or gas, together with the right of ingress and egress on, over and through the following described lands situated in Miller County, Arkansas, to wit:". (Then follows the description.)
>
> "The said undersigned owners, their heirs or assigns, to fully use and enjoy said premises, except as the same may be necessary for the purposes herein granted to the said Pipe Line Company, its successors or assigns."

Then follows a provision for the payment of damages which may arise from laying, maintaining, operating or removing said pipe line. It is further understood and agreed that the said Pipe Line Company, its suc-

cessors or assigns, may at any time lay an additional line or lines of pipe alongside of the first line, as herein provided, upon the payment of a like consideration for each additional line when laid, subject to the same rights and conditions (R., 85-86).

E. L. Stern.

I am superintendent of the Texas Pipe Line Company in Louisiana, and have charge of all the company's lines in said State. I can see no advantage to pipe lines from improved roads; we never take roads into consideration at all, but run on what we call an air line from starting point to destination, and for that reason good roads do not come very much in contact with pipe lines. In crossing a dirt road you dig right through it, and when you come to a good road we have to bore through with an auger, and then we case the line under the good road outside of the pipe line with pipe a size larger than the line we are constructing, and the casing is an extra expense, and the excavation across the road is always more expensive, because good roads are ditched out deeper on both sides of the road, and we have to go under this excavation and ditches and, if there is a break in the pipe line under the hard-surfaced road, there would be more expense in the repair of it. After constructing the line the maintenance is usually kept up by a line walker, who travels over the pipe line and upon any good road (R., 104-105). The good road helps a farmer in hauling his trucks, but it would not help the pipe line, because it is in the ground and we seldom have occasion to go see it (R., 106).

Ad Valorem for General Taxation. Lands Assessed at One-tenth of Value.

L. C. ADAMS, witness for and vice-president for the district, testified that he owned 5,000 or 6,000 acres of rich bottom land in the district. The lands were increased in value by levee drainage ditches and roads (R., 169). The cleared land is worth $100 per acre, of which he had 2,500, and that in the woods is worth $40 per acre, inside the levee. "As a matter of fact the lands inside of Miller Levee District No. 2, which lies inside of the road district, is rich land all along the river front. There are other farms of rich land in that vicinity."

W. J. PAUP, witness for the district, testified that the cleared land in that part of Miller County Highway and Bridge District that is within Miller Levee District No. 2 was assessed for taxation at $10 per acre, and the woods land at $4.50 per acre. The average assessment of hill lands was at $5 and $6 per acre. The whole assessment for road purposes was $6,687,178, of which the total assessment of benefits in Texarkana and the town of Mandeville (unincorporated) was $2,561,100, and outside of Texarkana and Mandeville, $3,664,445.

The total area in the Miller County Highway and Bridge District is 136,322 acres, which embraces the rich lands of Miller Levee District No. 2, 90,000 acres, about which Adams and Paup both testified.

Annual Assessments Upon Benefits.

Mr. Paup further said: The levy on the benefits for the year 1926 was 6⅔ mills for 1917, the same; 1918, 7

mills; 1919, 7 mills; the years 1920, 1921, 1922, and 1923, 10 mills, and for 1924, 8.5 mills (R., 158-159).

Testimony that Pipe Line Company Used Roads in Laying Down New Pipe Lines.

Witnesses for the district, E. H. Peyton, L. C. Adams, H. G. Sanderson, and C. S. Christian, testified that when the two additional pipe lines were laid in 1923 the improved roads were used in part for hauling the pipe and men.

D. B. Owens, witness for the district, testified that the roads were used during a preiod of time of about 2½ months in 1923 in taking up and relaying part of a line near the river (R., 129). And the Pipe Line Company was using wagons and trucks (R., 131). About two miles of old pipe was taken up and new pipe put in its place in 1921 (R., 136). They were unloading and hauling there, I imagine, two or three weeks. We did not have much of a force and some days it would rain and the men would not work, and things like that (R., 136).

C. S. Christian, engineer for the district, testified that in his opinion the Pipe Line Company was benefited by the building of the roads, by reason of hauling men and materials; that the Pipe Line Company was given no special consideration with reference to where the roads ran (R., 149). There were roads of some kind that the people used before the new roads were built (R., 148). The new roads were laid over places where old roads existed before, public roads or good roads or what not (R., 148).

Louis Josephs.

Louis Josephs testified that he was, and had continuously been, secretary of the Board of Commissioners of Miller County Highway and Bridge District since its creation under original act 153 of 1915, and under amended act 15 of 1917. He produced the original assessment book showing that Prairie Pipe Line Company was assessed valuation (without benefits) of poles, pipe, wire, plant, trackage (tankage), etc., in the district, $59,340, benefits, $59,340, and value with the improvements, $115,680 (R., 42 at bottom of page and R., 43, top of page).

It is shown by undisputed testimony that the Pipe Line Company owned 71.5 acres (R., 61), upon which the tanks and pumps were located, near Mandeville, assessed separately, and that there were no poles. This assessment was filed April 29, 1916 (R., 45).

Re-Assessment of 1920 Takes Place of First Assessment, 1916.

There was a reassessment in 1920 (R., 47), and the identical language as to the Prairie Pipe Line Company is as follows:

> "Prairie Pipe Line Company, 12 miles pipe line (and then) Prairie Pipe Line Company deeded (ditto) 12 miles telegraph and telephone line, $5,000.00 per mile, total $60,000.00"
>
> "Q. Didn't that take the place of this one (the original assessment of 1916)?
>
> "A. Well, yes, it follows that if a reassess-

ment was made, the first one was out of order'' (R., 46).

The reassessment was filed July 24, 1920 (R., 51).

Bonds Issued by the Commissioners.

The first bond issue of $223,000 was contracted December 5, 1916.

Along in 1917 all litigation was over, and I think the act had been separated, that issue was taken up and another issue of $177,000 added to it, so as to make the total $400,000. That was done March 24, 1917.

There was another bond issue of $40,000, August 5, 1919. Then there was a fourth issue later on, as money was needed, $60,000, September 24, 1920. There was a fifth issue of $40,000, making altogether $540,000, and of this there is outstanding $350,000 (R., 44-45).

At the time this case was tried, April 21 and 22, 1925 (R., 32), it was thought that Act Number 83, approved February 14, 1925 (see appendix of this brief), which gave the Board additional power and authorized unlimited bond issues and the rebuilding of all roads with concrete, asphalt or other hard surface, being a special act was void on account of a Constitutional amendment, which had been voted upon at the General Election of 1924, but it turned out that the amendment had failed (see case of McAdams *vs.* Kenley, 169 Ark., 97), and therefore the act is still in full force and effect.

A. B. Little.

A. B. Little was introduced as witness for petitioner (appellee) and testified that he had occupied the posi-

tion of assistant tax collector of Miller County, Arkansas, during the years from 1915 to 1917, and he introduced the correspondence between the tax collector's office and the Tax Commissioner Van Tuyl of the Pipe Line Company, of Independence, Kansas, showing that he (the deputy), in making up the statement of taxes for said company for the year 1916, had overlooked the item of $395.20, road tax, of which Mr. Van Tuyl had no previous knowledge, and the subsequent year he also overlooked the same. Also through this witness there was read in evidence the statement made by the collector to Mr. Van Tuyl that the entire amount of road tax would be paid out in 15 years, at the rate of $395.20 per year (R., 71).

There were three payments of taxes, based upon this information by Mr. Van Tuyl. Subsequently, in 1921, Mr. Black, his successor, ascertained there was a general reassessment of benefits, in which the taxes were increased (R., 112). Then he brought action in the Chancery Court to enjoin the collector from refusing to receive the general taxes without the special taxes, and was successful in a decision (Eason *vs.* Prairie Pipe Line Company, 149 Ark., 669), requiring the collector to receive such general taxes, notwithstanding that provision in both Act 153, Section 10 (R., 176-7), and Act 15, Section 9 (R., 90), which subjected the collector to the penalty of $100, if he did not collect the special tax without the general tax, and would penalize the taxpayer to the extent of 25 per cent of his general taxes.

APPENDIX

Showing Four Legislative Acts Relating to Miller County Highway & Bridge District, Designated by Nos. 163, 15, 16 and 83.

Act 153, entitled, "An Act to Lay off and Establish part of Miller County into a public highway and bridge district, for the purpose of construction of public highways, from the city of Texarkana, to the various localities in the territory, hereinafter described, and for the construction of public bridge in connection with such highways over and across Red River, between Fulton and Index." Section 1 fixes the boundaries of the District, which includes the North Half of Miller County, and fixes its name as "Miller County Highway & Bridge District," and provides that it shall be a public agency and a body politic, incorporate, *and that it shall have perpetual succession* (R., 170).

Section 2, provides that the District shall have power to construct and maintain 60 miles of free public highways, of such material as it shall deem best, leading from the city of Texarkana, to such points on Red River, between Fulton and Index at which it may deem desirable and suitable to construct a bridge over and across said river, and said district shall have power to construct and maintain a free public bridge in connection with said highways over and across said Red River.

Section 3 provides that the affairs of the district shall be managed and controlled by a commission composed of three land owners, residents of the district.

Sections 4, 5, and 6 confer power for the formation of plans and construction of the proposed improvements.

Section 7 reads as follows:

"SECTION 7. Immediately after ascertaining the cost of the public improvement contemplated by this Act, the commission shall appoint three assessors, who shall reside in the district; each of said assessors shall, before entering upon the discharge of his duty, take an oath to well and truly assess to the best of his ability the value of all benefits to be received by each land owner by reason of the proposed improvement, as affecting each tract of land in said district. They shall ascertain the value of the real property within said district without said improvement, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights-of-way, telephone and telegraph lines, pipe lines, and all other franchises *of whatsoever description, in any manner* connected with the realty in said district, *without said improvement, and the value thereof as benefited by said improvement, and shall charge against each lot, tract or parcel of real estate, railroad, tramroad, street railways, electric light and gas plants, water plants, rights-of-way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district*, an assessment according to the value of the benefit that will accrue to it by reason of the construction of said highways and bridge.

"The Board of Assessors shall within one hundred and twenty (120) days after their organization complete their duties by filing with the commission a list showing the description of the property of the district, the owners'

names as far as same appear from the last county assessment, and such corrections as they may ascertain should be made, *and the valuation* of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district without the improvement, *and the valuation with the improvement, and the benefit* estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the improvement; and shall file the same with the county clerk of Miller County for the inspection of all persons interested. Notice of the filing of said assessments shall be given by publication in one newspaper published in Texarkana, Arkansas, and said notice shall set a date not less than thirty days distant, and the place where any complaint may be made by any land owner, railroad, tramroad, street railway, gas and electric plant, water plant, telegraph or telephone line, pipe line or any franchise whatsoever in any way connected with the realty in said district before the Board of Assessors of any assessment made against his or its property.

"The said Board of Assessors shall correct any inequality, injustices, or errors, which they may find in the assessment, and shall hold meetings for the purpose of hearing the complaints

of the owners of any such property in said district as to said assessment, and *shall increase or decrease the assessment* so as to adjust the burden of the assessment to the benefit to accrue to the real property. Provided, *that in reassessing the benefits for the making of said improvements, the assessors shall never diminish the total amount of the assessed benefits in case said district shall have incurred debts.* The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner as aforesaid, aggrieved by the action of said Board of Assessors, may take an appeal to the commission within thirty days from the action of the Board of Assessors upon his complaint; or any other property owner aforesaid may appeal from the action of the Board of Assessors from any assessment which acts unequally upon his property.

"The commission shall hear all appeals and determine the same, and appeals may be taken from the commission to the County Court in the same manner as is now provided by law *that appeals may be taken from the county equalization board to the County Court*, which said appeals shall be taken within thirty (30) days from the action of the commission complained of.

"The assessors shall be paid the sum of three ($3.00) dollars per day for the time actually engaged by them in the discharge of the duties of their office.

"When the assessors have completed their work, and all appeals therefrom have been heard by the commission, the commissioners shall then equalize the assessment so as to equalize and

adjust all assessments to the benefit to accrue to each lot or parcel of real estate, railroad, tramroad, street railway, gas and electric light plant, water plant, or right of way, telephone or telegraph line, pipe line, or any other franchise whatsoever, connected with the realty of said district assessed, which said equalization shall be completed within thirty days after the time for appeal from the Board of Assessors has expired."

The words underscored in first paragraph of Section 7 are omitted in said paragraph, as copied at page 173 of the record, but the foregoing copy is correct, as will be shown by reference to Acts of the Legislature, 1915, pp. 624-625.

Section 8 provides that as soon as assessments have been equalized, the commission shall charge each lot, tract of real estate, railroad and utilities with an assessment equal to the *benefit* estimated in the said assessment list to accrue to such land, etc.; and shall apportion such assessment in annual installments, so as to realize annually only such sum of money as will be necessary to meet the expenses incurred, and a sinking fund to pay the bonded indebtedness, *and for such improvements and maintenance as the commission shall determine shall be paid from the assessment annually,* "provided that the improvements herein undertaken shall not exceed 15% of the valuation of the real property in said District, subject to improvement district assessment, as ascertained by the State and County assessments of said property for the year next preceding the time when the assessment herein provided for may be made, *provided, however, that this limitation of 15% of valuation shall not prevent an annual assessment, as hereinafter provided, for the*

maintenance of the improvement after the cost of the construction has been paid."

Section 8 further provides that all railroads, pipe lines and other utilities connected with the realty of said territory, shall be assessed according to the *betterments and increase in value*, in like manner as herein prescribed for real estate, *except that said assessments shall be made per mile.*"

Section 9 provides that the assessments shall be declared a lien upon all the assessed property in the district, ahead of all other liens, and shall continue until such assessments with any penalties and costs which may accrue thereon may be paid.

Section 10 provides that the board shall annually before the first of September, determine the amount of taxes which may be required for the succeeding year, and enter upon its records, an order levying the same upon the benefits to the property of the District, subject to taxation thereunder.

Said section further provides that "the amount of taxes herein provided for shall be annually extended upon the tax books of the county and collected by the collector of the county along with other taxes," and "if any collector shall fail to collect the road tax, along with the other taxes, he shall be subject to a *penalty of $100*, for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered by a suit brought by the commissioners to the use of the district; and the county clerk shall be subject to a like penalty for each case in which he shall fail to enter the road tax upon the tax books" (R., 177).

Section 11 provides for borrowing money and issuing bonds to make the improvements.

Section 12 provides for the payment of taxes between the first Monday of January and the 10th day of April of each year, and requires the collector to report all delinquencies for nonpayment, and to add a *penalty of 25 per cent*, and said section provides that the board of commissioners shall enforce the collections by Chancery proceedings in the Chancery Court of Miller County, and that the court shall give judgment for the amount of taxes and penalty and interest, and the method of procedure is prescribed (R., 177-179).

Sections 13 to 37 provide for the sale and redemption of property, and the conduct of the business of the board.

Act 15.

"An act to amend act number 153 of the Acts of the General Assembly of the State of Arkansas, of the year 1916, being an act forming the Miller County Highway and Bridge District." The whole of act 153 is amended by this Act No. 15, and Section 1 embraces the same territory as in Act 153, and a small quantity of land located in the adjoining counties, which had been cut off by Red River, and said section further provides that said territory "be and the same is hereby created and constituted a highway and bridge district, and said district shall be known as 'Miller County Highway and Bridge District,' and shall be a public agency and a body politic, incorporate under said name and style, and they may sue and be sued, plead and be impleaded, and *have perpetual succession* for the purposes hereinafter designated" (R., 185).

Section 2 provides that said district shall have power to construct 75 miles of *free public highways*, of such material as they may deem best, consisting of two

main lines, from the city of Texarkana, northerly to the Red River and from said city easterly to said river, with such branches as they may deem advantageous.

Section 3 provides for the appointment of three commissioners, naming the same, to manage the district.

Sections 4 and 5 provide for the organization of the board of commissioners, and authorizes them to form plans and to construct the improvements.

Section 6 is as follows:

> "Section 6. *The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the assessment of the benefits which will accrue* from the making of the improvements herein contemplated, and the assessors heretofore named by the board shall proceed to make a similar assessment upon the lands in Hempstead and Lafayette counties hereby added to this district.
>
> "If the board changes its plans of improvement, it shall file such changed plans with the county clerk of Miller County, *and if either the board of any individual thinks that, by reason of said changes in the plans, the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board*, and the board may, not oftener than once a year, order a re-assessment of the benefits in the entire district; *but in no event shall the total amount* of the assessed benefits within the district *ever be diminished;* and if any *future assessment* should be for an amount less than the preceding assessment of benefits, such assessment shall be *void*, and the preceding assessment shall continue in force.

"The assessment of the lands in Hempstead and Lafayette counties hereby added to the district shall be made in the same book as the present assessment and in the same manner.

"Future assessments of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water tramroad, telephone, telegraph *and pipe lines by the mile*, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and the *amount of the betterments*. Such assessment shall be filed with the county clerk of Miller County for the inspection of all persons interested; and upon its filing, the secretary of the board shall give notice by publication in a newspaper published in Texarkana, Arkansas, that the assessment has been filed, and shall set a date not less than thirty days distant and a place where any person interested may appear before the Board of Assessors and complain of the assessment of his property or of the assessment of any other property in the district.

"At the time fixed in said notice the Board of Assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefits that will accrue. The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the

Board of Assessors may appeal to the commission within thirty days; and the commission shall meet at some convenient time and hear all appeals and determine the same, and *their decision shall be final.* The assessors shall be paid the sum of three dollars ($3) per day for the time they are actually engaged in the discharge of their duties" (R., 187-189).

Section 7 attempted to ratify and confirm all the acts of the commissioners of said Miller County Highway & Bridge District, and all their agents in so far as they have acted by the authority of the commissioners, and all acts of the assessors of said district are ratified and confirmed, *particularly* the action of said commissioners in levying taxes upon the assessed benefits in said district, by their resolution adopted on the 5th day of December, 1916, and their action in issuing bonds of said district amounting to $223,000.00, and their action in settling with railroads; and it is further provided in Section 7, "that the improvement authorized by this Act shall not cost more than ten per cent of the value of the real property in said district as authorized by the last State and county assessment made before the particular work is undertaken; but interest shall not be computed as part of such costs." And "If, in the future, the assessed value of the property in the district shall be increased, and the power of the board to expend money for improvements shall increase proportionately, *and the board shall have the authority to levy further taxes in excess of the ten per cent limit herein prescribed, for the purpose of making necessary repairs upon the highways improved by it*" (R., 189).

It is provided by the Section 8 that the assessors hereby appointed shall continue to be the assessors

of the district until discharged by the board, which may appoint their successors from time to time.

Section 9 provides that the assessment shall be a charge and lien against all real estate in the district, from the date of said resolution, and shall be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid.

By Section 10, it is provided that whenever the board shall issue any bonds, it shall levy upon the assessed benefits, a tax, payable through a series of years until the maturity of said bonds, of an amount sufficient to pay said bonds with interest as they mature; and may pledge and mortgage said levy to secure payment of such bonds.

Section 10 further provides for penalty of $100.00 against the collector, should he receive the general taxes without payment of the special tax, and a like penalty against the County Clerk for each case in which he shall fail to enter the road tax on the tax books. The balance of said Act, from Section 11 to 22, inclusive, provides for the collection of the delinquent taxes, and penalty, and for the administration of the affairs of the district.

Act 16.

An Act to create Red River Bridge District.

The original act 153, provided for the building of 60 miles of road and a bridge. This was amended by Act 15, to provide for the building of 75 miles of highway without the bridge.

Act 16 creates a separate district, embodying the same territory as in the other acts, for the purpose of building a bridge across Red River. This bridge was built at Index, and a special Improvement district

tax was authorized to be assessed and was assessed against all property in the district, including the pipe line, to pay for the cost of the bridge.

Act Number 83.

AN ACT in Aid of Miller County Highway and Bridge District.

SECTION—

1. Commissioners may pave, cost, amount of tax.

2. Amends Section 6 act 15 of 1917 assessments, notice, appeals.

3. Amends Section 10 act 15 of 1917, extension of tax, collection.

4. Interest on benefits assessed.

5. All cases advanced in all courts.

6. Sale of lands.

7. Assessment confirmed.

8. Emergency, in force from passage.

WHEREAS, the Miller County Highway and Bridge District has constructed its roads of gravel; and

WHEREAS, it has been found that the expense of maintaining gravel roads under the heavy traffic now passing over the road running north from Texarkana along the State Line is so great that it would be to the interest of the district to pave said road with concrete; and

WHEREAS, with the growth of the community, similar conditions will arise in other portions of the district:

Now Therefore be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. The board of commissioners of the Miller County Highway and Bridge District *are hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed* which they find will require such hard surface in order to carry economically the traffic thereon. Plans for such hard surface roads shall be made by the board and filed with the county clerk of Miller County and notice thereof given by publication for one insertion in some newspaper published in the City of Texarkana.

The *cost of the improvement* authorized by this act shall *not exceed fifteen (15%) percent of the value of the real property* as shown by the *last county assessment made before the work is undertaken; but interest shall not be computed as part of the cost.*

The total present assessment of benefits in the aggregate shall never be diminished and the rate of taxation shall never exceed ten (10) mills per annum on the assessment of benefits; but in no year shall a tax be levied, which with the sums derived from the gasoline and automobile tax and other sources, will exceed the amount necessary to pay the bonds and interest maturing during the succeeding twelve months and such sums as may be necessary for repairs, *the whole tax never to exceed ten (10) mills on the assessment of benefits.*

SECTION 2. The *last paragraph of Section 6 of Act No. 15* of the Acts of the General Assembly of the State of Arkansas of the year 1917, entitled, "An Act to amend Act No. 153 of the Acts of the General Assembly of the State of Arkansas of the year 1915, being an act forming the Miller County Highway and bridge district," *approved January 29th, 1917,* be amended to read as follows:

At the time fixed in said notice, the board of assessors shall meet and shall hear the complaints of prop-

erty owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefit that will accrue. The board of assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the board of assessors may appeal to the chancery court of Miller County within thirty (30) days after the adjournment of the board of assessors, and not thereafter, for a revision of his assessment. The assessors shall be paid the sum of three ($3.00) dollars per day for the time that they are actually engaged in the discharge of their duties.

SECTION 3. The last paragraph of Section 10 of said Act shall be amended to read as follows:

The amount of taxes herein provided for shall be annually extended upon the tax books of the county and collected by the collector of the county along with other taxes; and for his services in making such collection the collector shall receive a commission of one (1%) per cent; and the collections shall be paid over by the collector to the treasurer of the district at the same time he pays over the county funds. No property owner shall be allowed to pay his state and county taxes unless he pays his road improvement taxes; and if any collector shall fail to collect the road tax along with the other taxes, he shall be subject to a penalty of $100 for each instance in which he shall collect from an individual the other taxes and omit the road improvement tax, unless the road improvement tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district and the county clerk shall be subject to a like penalty for each case in which he shall fail to extend the road improvement tax upon the tax books.

SECTION 4. *The assessment of the benefits of said Miller County Highway and Bridge District now on file and any other assessment of benefits, which it may make, shall bear interest at the rate of six (6%) per cent per annum. Collections shall first be applied to the interest; but interest need not be calculated until necessary to avoid collecting more than the total assessed benefits with interest.*

SECTION 5. All suits to restrain the commissioners of said district from proceeding with any work, or to restrain the collection of any taxes of said district, and all suits brought by the district to collect its taxes, and all suits questioning the authority of any of the officers of said district or their right to their positions, shall be deemed matters of public interest and shall be advanced in all courts, and shall be heard at the earliest possible moment; and all appeals therein must be taken and perfected within thirty (30) days.

SECTION 6. When lands have been sold in proceedings to enforce the collection of the taxes of said district, the owner thereof shall have two years from the date when they are stricken off by the commissioner making the sale in which to redeem therefrom.

SECTION 7. It is ascertained and hereby declared that the assessment of benefits of said district is just, equitable and proportionate, and the same is hereby ratified and confirmed and shall stand as the assessment of benefits of said district until a new assessment is made in the manner provided by the said act No. 15 of 1917.

SECTION 8. This act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared, and the act shall take effect and be in force from and after its passage.

Approved: February 14, 1925.

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Petition of STANDARD PIPE LINE COMPANY, INC., for Writ of Certiorari, Directed to the United States Circuit Court of Appeals for the Eighth Circuit, to Bring Before the Supreme Court of the United States the Case of Miller County Highway & Bridge District, Appellant, *vs.* Standard Pipe Line Company, Inc., Appellee.

And now comes the petitioner herein, Standard Pipe Line Company, Inc., and moves the court upon certified copy of the transcript of the record herein, and upon the annexed petition for writ of certiorari, directed to the United States Circuit Court of Appeals for the Eighth Circuit, to bring before this Honorable Court the above styled case, decided by the United States Circuit Court of Appeals for the Eighth Circuit, for such proceedings therein as to this court may seem just, and for such other and further relief as may be just.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

SEPTEMBER 17TH, 1927.